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STATE OF WASHINGTON
DEPARTMENT OF STATE
PUBLICITY DIVISION

IRRIGATION LAWS

(SECOND EDITION)



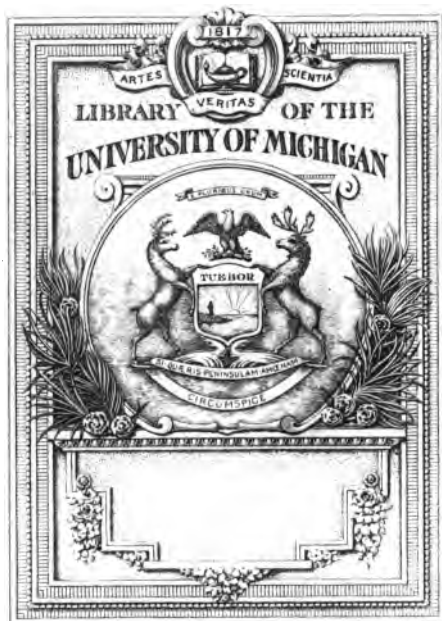
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1916

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OF THE

State of Washington

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LAWS OF THE STATE OF WASHINGTON GOVERNING WATER RIGHTS AND IRRIGATION.

CHAPTER I.

CONSTITUTIONAL PROVISION.

1. Use of Water for Irrigation, Etc., Public Use.

The use of the waters of this state for irrigation, mining and manufacturing purposes shall be deemed a public use. (§ 1, Art. XXI, State Const.)

The condemnation of land for irrigation purposes is a public use. 20 W. 454.

Waters of lakes may be used for irrigation. 42 W. 43.

The provision authorizing water for manufacturing is in conflict with the federal constitution if the water is used for a private use. 39 W. 648.

Statutory declaration that the use of waters is public. § 11 *infra*.

CHAPTER II.

STATUTORY ENACTMENTS.

2. Unit of Measurement.

The unit of measure for water for irrigation, mining, milling and mechanical purposes in this state shall be a cubic foot of water per second of time. (L. '90, p. 729, § 1; Rem.-Bal., § 6315.)

3. Right of Appropriation.

The right to the use of water in any lake, pond or flowing spring in this state, or the right to the use of water flowing in any river, stream or ravine of this state, for irrigation, mining or manufacturing purposes, or for supplying cities, towns or villages with water, or for waterworks, may be acquired by appropriation, and, as between appropriations, the first in time is the first in right. (L. '91, p. 327, § 1; Rem.-Bal., § 6316.)

See also §§ 11, 12, 13, 33, 49, 66 and 79.

Riparian rights. See § 12.

Appropriation of seepage waters. See § 15.

Appropriation of overflow waters. See § 16.

Change of use. See § 17.

Adjudication of priorities. See § 61.

4. Notice of Appropriation.

Any person, persons, corporation or association desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended storage or diversion, stating therein: (1) that such appropriator claims the water there lying, being or flowing to the extent of one cubic foot of water per second of time, or some multiple or some fractional portion thereof; (2) the purpose for which said water is appropriated, and the place or places, as near as may be, of intended use; (3) the means by which it is intended to store or divert the same; (4) a copy of the notice must, within ten days after it is posted, be filed for record in the office of the county auditor of the county in which it is posted. (L. '91, p. 327, § 2; Rem.-Bal., § 6317.)

See also §§ 6, 33, 34, 61 and 66.

Appropriation by United States. See § 241.

5. Construction of Works, When to Begin.

If said use is by storage, the appropriator must, within three months after the notice is posted, commence the construction of the works by which it is intended to store the same. If said use is by diversion, the appropriator must, within six months after the notice is posted, commence the excavation or construction of the works by which it is intended to divert the same; it being herein expressly provided that such works must be diligently and continuously prosecuted to completion, unless temporarily interrupted by the elements. (L. '91, p. 328, § 3; Rem.-Bal., § 6318.)

When right attaches. See § 14; see also § 46.

6. Vested Right—Forfeiture by Non-Compliance.

By a strict compliance with the above rules, the appropriator's right to the use of the water actually stored or diverted relates back to the time the notice was posted; but a failure to comply therewith deprives the appropriator of the right to the use of the water as against a subsequent appropriator who faithfully complies with the same. (L. '91, p. 328, § 4; Rem.-Bal., § 6319.)

See §§ 4, 14, 46, 50 and 145.

7. Prior Appropriations, How Perfected.

Persons who have heretofore appropriated water, and have not constructed works, or have not diverted the water and applied it to some purpose, as herein stated, must, within thirty days after this act takes effect, proceed as in this act provided, or their right ceases. (L. '91, p. 328, § 5; Rem.-Bal., § 6320.)

"Act" here refers to §§ 3, 4, 5, 6, 7, 8, 9 and 10 herein, and this act took effect March 9, 1891.

8. Transfer of Right—Notices to Be Recorded.

The right to the use of water acquired by appropriation may be transferred, like other property, by deed. The county auditor of each county in this state must keep a book in which he must record the notices provided for in this chapter. (L. '91, p. 328, § 6; Rem.-Bal., § 6321.)

9. Former Appropriations Recognized.

Appropriations of water heretofore made for any of the purposes in this chapter provided are hereby recognized, but this chapter shall not be construed to interfere with vested rights. (L. '91, p. 328, § 7; Rem.-Bal., § 6322.)

See note to § 7. "Appropriations of water heretofore made" means appropriations made prior to March 9, 1891.

See also chapter VI, § 60 *et seq.*

See also § 145.

Appropriation by United States. See § 241.

10. Applications of Above Provision.

The provisions of section 4, 5, 6 and 7 shall only apply to appropriations of water made for irrigation, and shall not apply to appropriations for irrigation made prior to the passage of this act, nor to water rights existing at the date of the passage of this act: *Provided*, That in appropriations for irrigation, begun but not completed prior to the passage of this act, the appropriator shall comply with the provisions of sections 4, 5, 6 and 7: *And further provided*, That said sections shall not interfere with the vested rights of any irrigation district now organized. (L. '91, p. 328, § 8; Rem.-Bal., § 6323.)

"Act," as used in this section, refers to §§ 3 to 10, inclusive, and § 17, and went into effect March 9, 1891.

Appropriation by United States. See § 241.

11. Appropriating Surplus Water.

Any person, corporation or association of persons is entitled to take from the natural streams or lakes in this state water for the purposes of irrigation and mining, not theretofore appropriated or subject to rights existing at the time of the adoption of the constitution of this state, subject to the conditions and regulations imposed by law: *Provided*, That the use of water at all times shall be deemed a public use, and subject to condemnation as may from time to time be provided for by the legislature of this state. (L. '99, p. 261, § 1; Rem.-Bal., § 6325.)

See § 3 and note.

See §§ 12, 13, 18, 25, 31, 34, 79, 145 and 236.

Adjudication of priorities. See chapter VI *infra*.

12. Rights of Riparian Owners to Use Water.

All persons who claim, own or hold possessory right or title to any land, or parcel of land or mining claim within the boundaries of the State of Washington, when such lands, mining claims or any part of the same are on the banks of any natural stream of water, shall be entitled to the use of any water of said stream not otherwise appropriated for the purposes of mining and irrigation to the full extent of the soil for agricultural purposes. (L. '99, p. 261, § 2; Rem.-Bal., § 6326.)

See § 3 and note.

See §§ 11, 13, 18, 31, 34, 48, 50, 79, 145 and 236.

Right-of-way for ditch for riparian owner. See §§ 20 and 26.

13. Rights of Non-Riparian Owners.

Any person who owns or has the possessory right to lands in the vicinity of any natural stream or lake, not abutting such stream or lake, may take water from such stream or lake if there be any surplus or unappropriated water in such stream or lake. (L. '90, p. 707, § 7; Rem.-Bal., § 6331.)

See §§ 3, 11, 12, 18-34, 50, 79, 145 and 236.

14. When Appropriator's Right Attaches.

Any person desiring to dig a ditch or canal from any natural stream or lake of water in this state, for the purpose of carrying water to irrigate lands, shall be entitled to take water

from said stream or lake not appropriated at the time that the construction of said ditch is begun: *Provided*, That such person shall not keep or store, by virtue of the said ditch, any more water than is used for the purposes of irrigation. (L. '90, p. 708, § 11; Rem.-Bal., § 6335.)

See §§ 5, 6, 29, 34, 46, 50, 79, 145 and 236.
Appropriation by United States. See § 241.

15. Appropriation of Waste and Seepage Water.

All ditches now constructed, or hereafter to be constructed, for the purpose of utilizing the waste, seepage, or spring waters of the state, shall be covered by the same laws as those ditches constructed for the purpose of utilizing the water of natural streams and lakes: *Provided*, That the person upon whose lands the seepage or spring waters first rise shall have a prior right to such waters, if capable of being used upon his lands. (L. '90, p. 710, § 15; Rem.-Bal., § 6339.)

See § 3 and note.
See §§ 34 and 236.

16. Right to Overflow Waters.

All persons who shall have enjoyed the use of the water in any natural stream or lake for the irrigation of any land by the natural overflow or seepage of the water of such stream or lake shall, in case of diminution of the water supplied by such stream or lake, from any cause, so as to prevent such irrigation therefrom in as ample a manner as formerly, have the right to construct a ditch for the irrigation of such land, and to take water from such stream or lake therefor; and his right to water through such ditch shall have the same priority as though such ditch had been constructed at the time he occupied and used such land. (L. '90, p. 710, § 16; Rem.-Bal., § 6340.)

See § 3 and note.
See §§ 34 and 236.

17. Use of Water May Be Changed.

Water appropriated for any of the purposes in this chapter mentioned may be changed to any other purpose herein specified, or to any other beneficial use, and the right to such use

shall relate back to the original appropriation. (L. '91, p. 329, § 9; Rem.-Bal., § 6324.)

See §§ 3, 10 and 34.

CHAPTER III.

DITCHES—RIGHT-OF-WAY.

18. Right-of-Way—May Condemn.

All persons, associations, and corporations entitled to the use of water under the provisions of this chapter, in cases where the right-of-way over intervening lands is necessary to the use of such water, may condemn the right-of-way for any such ditch or ditches as hereinafter provided. (L. '90, p. 715, § 34; Rem.-Bal., § 6358.)

See §§ 11, 12, 18, 20, 31, 34, 138, 236 and 257.

19. Condemnation of.

Upon the refusal of the owner of the lands, lessees or those in possession, through which it is proposed to run said canal, ditch or works to permit the passage of the same through their property the person or persons desiring the right-of-way for such ditch, canal or works may proceed to condemn and take the right-of-way therefor, as hereinafter provided. (L. '90, p. 707, § 5; L. '99, p. 262, § 5; Rem.-Bal., § 6329.)

See §§ 11-18, 20, 31, 34 and 236.

20. Right-of-Way—Riparian Proprietor.

When any person owning claims, lands or mining claims as specified in the foregoing section,* is not a riparian proprietor or being such has not sufficient frontage on said stream, lake, artificial stream, ditch or reservoir, to obtain a sufficient flow of water to irrigate his land or use on his mining claim, he shall be entitled to the right-of-way through the farms or tracts of lands or other mining claims which lie between him and said stream, lake, artificial stream, ditch or reservoir, or the farms, tracts of lands or mining claims which lie above and below him

* This section refers to § 12 *q. v.*

on said stream, lake, artificial stream, ditch or reservoir. (L. '90, p. 706, § 3; L. '99, p. 261, § 3; Rem.-Bal., § 6327.)

See §§ 18-30¼, 31, 46, 47, 73 and 236.

21. Right-of-Way—Non-Riparian Proprietor.

The persons referred to in section 13 *supra* shall be entitled to the right-of-way sufficient for a ditch to carry the water required to fully irrigate their land, or to carry such water as they may be entitled to, with full right of ingress and egress to construct, repair, and maintain such ditch over the lands lying between the land of such person and the point on the natural stream or lake from which they wish to take water, and from which they are entitled to take water, and the land which they wish to irrigate, which right-of-way shall be subject to condemnation, as hereinafter provided, (L. '90, p. 707, § 8; Rem. Bal., § 6332.)

See §§ 20, 24-30¼ and 34.

22. Right-of-Way From Springs, Etc.

Where the owners of any spring, or the appropriators thereof, or of any stream or lake, desire to conduct the waters thereof to any land for the purposes of irrigation, and to accomplish such object it is necessary to cross with ditches, flumes, or other conduits the lands owned or occupied by other than the owners or appropriators of such spring, stream, or lake, the right-of-way over and across the lands of others for conducting said water may be acquired in the manner herein provided. (L. '90, p. 716, § 37; Rem.-Bal., § 6362.)

Width of right-of-way. See § 25.

See §§ 20, 21, 27, 28, 31 and 236.

23. Artesian Wells, Right-of-Way From.

Any person who may be entitled to water from any artesian well shall have the right to condemn the right-of-way for a ditch to convey such water for the purpose of irrigation over the lands intervening between such well and the place where the party owning such water wishes to use the same, and such right-of-way may be condemned sufficient for the purpose of con-

veying the water, together with the right of ingress and egress, to construct, maintain and repair said ditch, as is hereinafter provided for in this chapter. (L. '90, p. 711, § 18; Rem.-Bal., § 6342.)

Regulating use of artesian wells. See §§ 268-271.
See §§ 20, 27, 28 and 236.

24. Head of Ditch May Be Extended—Condemnation For.

In case the channel of any natural stream or lake shall become so cut out, lowered, turned aside, or otherwise changed, from any cause, as to prevent any ditch or canal from receiving the proper inflow of water to which it may be entitled from such natural stream or lake, the owner or owners of such ditch or canal shall have the right to extend the head of such ditch or canal to such distance up the stream or lake which supplies the same as may be necessary for securing a sufficient flow of water into the same, and for that purpose shall have the right to maintain proceedings for condemnation of right-of-way for such extension as in case of constructing a new ditch, and the priority of right to take water from such stream or lake through such ditch or canal as to any such ditch or canal shall remain unaffected in any respect by reason of such extension: *Provided, however,* That no such extension shall interfere with the complete use or enjoyment of any other ditch or canal. (L. '90, p. 717, § 41; Rem.-Bal., § 6366.)

See §§ 20, 21, 27, 28, 31, 34, 138, 236 and 257.

25. Limitation.

Such right-of-way shall extend only to a ditch sufficient for the purpose required, together with the right of ingress and egress to construct, maintain and repair the same; and whenever any person or persons find it necessary to convey water for the purposes of irrigation or mining through the improved or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable upon which can be constructed with uniform or nearly uniform grade, and discharging the water at a point where it can be conveyed to and used upon the land or

lands or mining claim of the person or persons constructing such ditch, canal or works. (L. '99, p. 262, § 4; Rem.-Bal., § 6328.)

See § 11 and note.

See §§ 20, 21, 22, 26-31, 34, 138, 236 and 257.

26. Shortest Route Across Another's Land to Be Selected.

Whenever any person or persons find it necessary to convey water for the purposes of irrigation through the improved or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable upon which such ditch can be constructed with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and used upon the land or lands of the person or persons constructing such ditch. (L. '90, p. 717, § 40; Rem.-Bal., § 6365.)

See §§ 3, 12, 20, 21, 25, 27, 28, 31, 138, 236 and 257.

27. Number of Ditches on Same Parcel of Land Limited.

No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch. (L. '90, p. 717, § 39; Rem.-Bal., § 6364.)

See §§ 20-26, 28, 31, 138, 236 and 257.

28. Condemnation—Procedure—Assessment of Damages—Decree.

In case of the refusal of the owners or claimants of any lands or mining claims through which such ditch, canal or other works are proposed to be made or constructed, to allow the right-of-way or the passage thereof, the persons, company or corporation desiring the right-of-way shall file in the superior court of the county, a complaint describing the land or mining claim to be crossed, the size of the ditch, canal or works, the quantity of land required to be taken and the value of the land and damages to the property, setting forth the names of the owners or

reputed owners or parties interested in the lands to be crossed, and praying that the right-of-way be granted. A summons shall issue and be served on all parties interested, as in all other cases of civil nature. In case the defendant fails to appear the court shall, when the cause shall come on to be heard, impanel a jury in the cause, and they shall determine the value of the land occupied by said ditch, canal or works and the damages, and, upon the return of the verdict, the court shall enter a decree, directing that the right-of-way for the ditch, canal or works be established according to the description in the complaint, and that the plaintiff shall pay to the clerk of the court the full amount of the value of the land and damages found by the jury, before the plaintiff shall begin work on said ditch, canal or works. (L. '99, p. 262, § 6; Rem.-Bal., § 6359.)

See §§ 20-27, 29-31, 34, 138, 236 and 257.

29. Value of Land Sole Issue.

That whenever the defendant shall appear in the cause, he shall allege in his answer the value of the land proposed to be used by said ditch, canal or works, and the jury shall determine the value and the proceedings shall be had as in the preceding section: *Provided*, That plaintiff shall not be required to reply to the answer of the defendant, but the sole issue to be determined by the jury shall be the value of the land to be occupied by said ditch, canal or works, and the damages thereto. (L. '99, p. 263, § 7; Rem.-Bal., § 6360.)

See §§ 14, 20, 21, 25, 28, 31, 34, 138 and 257.

30. Liberal Construction of Act.

The provisions of this act* shall be liberally construed so that the ultimate object and the intent of this act shall be fully carried out. (L. '99, p. 263, § 9; Rem.-Bal., § 6361.)

See §§ 20, 21, 25, 28, 31 and 34.

30½. Interpretation.

The word person, whenever used in this act,* shall be construed to mean either a natural person, an association, or cor-

* "This act" refers to §§ 11, 12, 19, 20, 25, 28, 29, 30 and 30½.

poration, and the word he shall be construed to mean she, it or they, and the word ditch shall be construed to include and mean dike, flume-way and irrigating canal. (L. '99, p. 263, § 8.)

See also §§ 20, 21, 25, 28, 31, 34, 90 and 98.

IRRIGATION COMPANIES.

31. Corporations, Etc., May Construct Ditches.

Any corporation duly organized under the laws of this state for the purpose of constructing ditches or canals to carry water for irrigating purposes, or any person or persons, or association or firm, may construct irrigating canals, ditches or flume-ways for the purposes of carrying water from any natural stream, reservoir, or any lake within this state, and may condemn the right-of-way therefor, as provided for by sections 18, 22, 24, 26, 27, 28, 29, 30, 46, 47 and 73 for the purposes of furnishing water to persons upon the line of said ditch, or its lateral branches, to irrigate the lands of any person or persons, whether the same be on any natural stream or lake, or whether or not said corporation, association, person or firm owns any land upon the line of the said ditch, or its laterals. (L. '90, p. 721, § 55; Rem.-Bal., § 6380.)

See § 18 *et seq.*

See also §§ 48, 74, 79, 145 and 236.

32. Ditch Company a Public Carrier.

Such corporation, person, association or firm shall be deemed to be a public carrier, and shall at all times be subject to the regulations prescribed for said ditch by the legislature from time to time. (L. '90, p. 722, § 56; Rem.-Bal., § 6381.)

Irrigation companies are subject to regulation by the public service commission. See §§ 8 and 54, Ch. 117, Laws 1911.

See also § 236.

33. Corporations Conveying Water May appropriate Lands.

All corporations authorized to do business in the state, and who have been or who may hereafter be organized, for the purpose of erecting and maintaining flumes and aqueducts to convey

water for consumption or for mining, irrigation, milling or other industrial purposes, shall have the same right to appropriate lands for necessary corporate purposes, and under the same regulations and constructions as are provided for other corporations; and such corporations organized for such purposes, in order to carry out the object of their incorporation, are authorized to take and use any water not otherwise legally appropriated. (L. '79, p. 134, § 1; Rem.-Bal., § 9510.)

Right to appropriate water. See §§ 3 and 4.

34. Certain Companies May Appropriate Water.

Any person or persons, or company now incorporated, or that may hereafter become incorporated under the laws of this state, for the purpose of mining or manufacturing, shall have the right to purchase or appropriate and take possession of and divert from its natural channel, and use and hold the waters of any river, creek, or stream in this state that may be required for the mining and manufacturing purposes of any such person or persons, corporation or corporations, and to construct all dams, canals, reservoirs, ditches, pipes, flumes, and aqueducts suitable and necessary for the controlling, directing, and running such waters to their mines or manufacturing establishments of any such person or persons, corporation or corporations, where the same may be intended to be utilized for such purposes: *Provided*, That no such appropriation or diversion of the waters of any such river, creek, or stream from its natural channel, nor shall any such dam, canal, reservoir, ditch, pipe, flume, or aqueduct be constructed, to the detriment of any person or persons, corporation or corporations, occupying the lands or being located below the point or place of such appropriation or diversion on any such stream or its tributaries, or above or below such dam, canal, reservoir, ditch, pipe, flume, or aqueduct, or of the owners of the lands through which the waters run in the natural course for the deprivation of the same, or the owners of the land through or upon which such dam, canal, reservoirs, ditch, pipe, flume, or aqueduct may pass

through or over, or be situated upon, unless just and adequate compensation be previously ascertained and paid therefor. (L. '79, p. 124, § 1; Rem.-Bal., § 9509.)

See also §§ 3, 4, 11-19, 21, 24, 25, 28-30½ and 79.

35. The Usual Procedure.

That the mode of proceeding to appropriate, take possession of and divert such waters and to build such dam, canal, ditch, reservoir, pipe, flume or aqueduct, as prescribed in section one of this act, when the parties cannot agree upon the purchase thereof, shall be the same as prescribed in chapter four of an act to provide for the formation of corporations, approved November thirteenth, eighteen hundred and seventy-three [§§ 5102-12, P. C.; §§ 921-933, Rem. Bal.], except that the amount of the benefits accruing to the residue of the property of the same individual or corporation, by reason of the use made of that taken, to be estimated by the parties assessing the damages, shall be deducted from the value of the property taken. (L. '79, p. 125, § 2; P. C., § 5141.)

This section is probably of no force, but it has been retained in the above form. It was not included in the Rem.-Bal. compilation.

36. Use of Natural Stream as Channel.

Any person may take any water which he may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the waters thereof above ordinary high water mark; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the commissioners of irrigation of the district, or if there be no such commissioners, then by the county commissioners of the county in which the water shall be taken out for use, upon the application of any person interested. (L. '90, p. 709, § 13; Rem.-Bal., § 6337.)

See §§ 79, 91, 145, 146 and 236.

37. Use of Pumps.

All persons on the margin, brink, neighborhood, or precinct of any natural stream or lake of water, shall have the right and power to place upon the bank of such stream or lake a wheel, steam pump, or other machine for the purpose of raising water to the level required for the use of such water in irrigating any land. The person desiring to use such water shall be entitled to condemn a right-of-way over any tracts of land between the point where he takes the water from any natural stream or lake and the place where he desires to use the same, in accordance

with the provisions hereinafter made for the condemnation of right-of-way and of water. (L. '90, p. 709, § 14; Rem.-Bal., § 6338.)

See §§ 41, 48, 146 and 236.

38. May Overflow State Lands for Irrigation Use.

There be, and is hereby, granted by the State of Washington the right, privilege, power and authority, to any person or corporation, to perpetually back and hold water upon and over any land belonging to the State of Washington, and to overflow any such land and inundate the same, if it be necessary in the erection, construction, maintenance or operation of any water power plant, reservoir or works for impounding water for power purposes, irrigation, mining or other public use. (L. '07, p. 233, § 1; Rem.-Bal., § 6828.)

See chapter XIII, § 247, right to construct dams.

See §§ 39 and 40.

See also § 199.

39. Board of Land Commissioners Must First Appraise Damages.

The right, privilege, power and authority herein given and granted shall not be exercised or enjoyed until application shall first be made to the board of state land commissioners to have the amount of damages appraised and fixed, which shall be done within sixty days after such application is made. (L. '07, p. 233, § 2; Rem.-Bal., § 6829.)

See §§ 38, 40 and 247.

40. Damages to be Paid.

When and as soon as said damages are so fixed and assessed by the board of state land commissioners, the same shall be paid to said officer. (L. '07, p. 233, § 3; Rem.-Bal., § 6830.)

See §§ 38, 39 and 247.

41. Right-of-Way Across State Lands.

A right-of-way through, over and across the public lands of the State of Washington is hereby granted to any irrigation district, or irrigation company, duly organized under the laws of this state, and to any association or individual, constructing

or proposing to construct an irrigation ditch or pipe line for irrigation. (L. '07, p. 353, § 1; Rem.-Bal., § 6844.)

See §§ 37, 45, 208 and 247.

See also § 199.

42. Must File Map With State Land Commissioner.

In order to obtain the benefits of this grant, the irrigation district, irrigation company, association or individual constructing or proposing to construct such irrigation ditch or pipe line for irrigation shall file with the board of state land commissioners a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, and shall pay to the state as hereinafter provided the amount of the appraised value of the said lands used for or included within said right-of-way. The land within said right-of-way shall be limited to an amount necessary for the construction of a ditch sufficient for the purpose required, together with sufficient land on either side thereof for ingress and egress, to maintain and repair the same. (L. '07, p. 353, § 2; Rem.-Bal., § 6845.)

See §§ 41, 43, 44, 45, 46 and 247.

What map shall show. See § 208.

43. State Land Commissioner Shall Ascertain Value of Right-of-Way.

Upon the filing of the plat and field notes as herein provided, said board of state land commissioners are hereby authorized and directed to ascertain the value of the land to be used for or included within said right-of-way, which price shall be the full market value thereof, but not to be less than ten dollars per acre. (L. '07, p. 353, § 3; Rem.-Bal., § 6846.)

See §§ 41, 42, 44, 45, 46 and 247.

44. Future Grants of State Affected.

Upon full payment of the value of such easement ascertained as aforesaid, any future grant or lease by the state of the lands affected by such right-of-way shall be subject to the easement obtained under the provisions of this act. (L. '07, p. 353, § 4; Rem.-Bal., § 6847.)

"This act" refers to §§ 41 to 45, inclusive.

See § 247.

45. Concurrent.

Nothing contained in this act shall be deemed to in any way conflict with any existing law of this state relating to the method of acquiring rights-of-way for irrigation ditches. (L. '07, p. 353, § 5.)

"This act" refers to §§ 41 to 45, inclusive.

CHAPTER IV.**MAPS.****46. Map of Ditches to Be Filed—Contents—Statement.**

Every person, association, or corporation hereafter constructing or enlarging any ditch or canal, and taking water directly from any natural stream or lake, and of the carrying capacity of more than one cubic foot of water per second of time, as so constructed or enlarged, shall, within ninety days after the construction or enlargement, file in the office of the county clerk [of the county] in which the headgate of such ditch may be situated a map showing the point of location of such headgate, the route of such ditch or canal, the legal subdivisions of the lands upon which such structures are built, or to be built; if on surveyed lands, the names of the owners of such lands, as far as the same are of record in the office of the county clerk of the county in which they are situated, such courses, distances, and corners, by reference to legal subdivisions if on surveyed lands, as will clearly designate the location of such structures. Upon or attached to such map shall be a statement showing: (1) the point of location of the headgate above mentioned; (2) the depth, width and grade of such ditch or canal; (3) the carrying capacity of such ditch or canal in cubic feet per second of time; (4) the time of commencement of work on such structures, which time may be dated from the commencement of the surveys therefor. In case of construction or enlargement, such statement shall also show the matters required in items second, third, and fourth above, as to the enlargement, and state the increased capacity arising from such enlargement. If such statement be filed within the time above limited, priority of right-of-way and water accordingly shall date from the day named as the day of commencing work; otherwise, only from the date of

the filing of the same: *Provided*, That nothing herein contained shall be taken to dispense with the necessity for due diligence in the prosecution of such structures on the part of the projectors of the same. Such statement shall be signed by the person, association, or corporation on whose behalf it is made, and the truth of the matters shown in such map and statement, shall be sworn to by some person in whose personal knowledge the truth of the same shall lie. (L. '90, p. 718, § 42; Rem.-Bal., § 6367.)

See also §§ 20, 31, 42, 43, 47, 138, 208, 236 and 257.

Inception of rights. See §§ 5, 6, and 14.

Adjudication of priorities. See § 60 *et seq.*

47. Applies Only to Ditches for Irrigation Purposes.

This chapter shall apply to and affect only ditches or canals used for carrying water for the purpose of irrigation, and for no other purpose whatever: *Provided*, That all rights shall be forfeited under the provisions of this chapter unless due diligence is used in such construction or enlargement. (L. '90, p. 719, § 43; Rem.-Bal., § 6368.)

See §§ 20, 31, 46, 138, 236 and 257.

CHAPTER V.

WATER TAKEN BY EMINENT DOMAIN.

48. Petition to Condemn Water Rights—What to Contain.

Any person, association, or corporation desiring to condemn the riparian rights of persons in any natural stream or lake in this state may do so as follows: Such persons, firm, or corporation shall file his, their, or its petition in the superior court of the county wherein said stream or lake or any part thereof is situated, from which such person, association, or corporation desires to take such water, setting forth the uses that the said person, association, or corporation intends to make of said water, the amount of water desired to be taken, and the extent of time that the said water is intended to be used. (L. '90, p. 719, § 44; Rem.-Bal., § 6369.)

Eminent domain extends only over riparian rights. See § 59.

See also §§ 3, 12, 31, 37, 53, 146 and 236.

Right of United States. See § 238.

49. Notice of Proceedings—How Given—What to Contain.

If it appears to the court from the petition that said water is to be used for irrigation, the court shall direct notice to be given to all persons concerned, by a notice to be published in some paper printed in the county wherein said petition is filed, or if there be no newspaper published in said county, then copies of said notice shall be posted in at least five places along said stream or lake, and at the front door of the courthouse of the county wherein said proceedings are pending; which said notice shall contain the amount of water sought to be appropriated or taken from said stream or lake, the place at which said water is to be taken from said stream or lake, the amount of water to be so taken, and the use to be made of said water, together with the name or names of the person or persons, association or corporation, intending to take the same from said stream or lake; and which said notice shall fix the time at which said petition shall be heard by the court, not exceeding twenty days from the time that said notice is first published or posted as aforesaid, as well as the place where said petition shall be heard. (L. '90, p. 719, § 45; Rem.-Bal., § 6370.)

See §§ 3, 48, 236 and 238.

50. Owner to Present Claims.

The persons having rights to the waters of any stream or lake, and desiring to maintain them, shall appear at the time and place mentioned in the notice aforesaid, and present such claim, and all persons failing to appear at such time shall be deemed to have waived all rights of every kind whatsoever as against the partition of the waters of said stream or lake to the extent that said petition seeks to appropriate the same, and the use set forth in the petition. (L. '90, p. 720, § 46; Rem.-Bal., § 6371.)

See §§ 6, 12, 13, 14, 51, 52, 53, 56 and 236.

51. Court to Determine Right Where Claim Filed.

Upon the filing of any claim to any rights in said stream or lake by any person or persons adversely to the petitioner, the court, unless the right of the person or persons so claiming

rights as against the petitioner are admitted by the petitioner, shall proceed to determine whether or not such persons have a subsisting right to the waters of said stream or lake, adverse to the rights sought by the petitioner to the use of the waters thereof, and for the purpose of such determination of the claims to any rights in such stream or lake, shall be deemed defendants, and the petitioner as plaintiff, in such proceedings. (L. '90, p. 720, § 47; Rem.-Bal., § 6372.)

See §§ 50, 52, 60 and 236.

52. Appraisers Appointed to Fix Compensation.

In the event that the court finds that any person is entitled to any right adverse to the petitioner in the waters of said stream or lake, the court shall appoint three persons to appraise the right of, as far as the same are sought to be taken from said claimant or claimants by the petitioner, and to fix a just compensation for such rights, which compensation shall be based upon the actual injury done to the claimant by the taking of said waters from said stream or lake by the petitioner. (L. '90, p. 720, § 48; Rem.-Bal., § 6373.)

See §§ 50, 51, 53, 54, 58 and 236.

53. Report of Appraisers—Objections to.

Such appraisers shall make their report as soon as the same can reasonably be made, to the court having the proceedings before it, and on the filing of such report, either party or any person interested can appear and file objections thereto, either as to the amount found by the appraisers, or because of any irregularity tending to do either party injustice in the proceedings before such appraisers. (L. '90, p. 720, § 49; Rem.-Bal., § 6374.)

See §§ 48, 50, 52, 54, 55 and 236.

54. Re-Appraisal May Be Had, When.

In case the court finds that there have been irregularities affecting the finding of the appraisers, it shall have the power to set aside the appraisal, and either appoint new appraisers, in whole or in part, or direct the former appraisers

to proceed anew in making the said appraisalment. (L. '90, p. 720, § 50; Rem.-Bal., § 6375.)

See §§ 52, 53, 58 and 236.

55. Trial Where Appraisalment Unsatisfactory.

In case either of the parties object to the appraisalment because of its smallness or excessiveness, the court shall note the case for trial in the same manner as any other civil case at law is noted for trial, the petitioner being defendant, and the claimant or claimants being plaintiff, each separate, the claimants for damages being done as plaintiff, and the petitioner as defendant. (L. '90, p. 721, § 51; Rem.-Bal., § 6376.)

See §§ 53, 57 and 236.

56. Finding by Jury—Appeal.

The jury, in assessing damages, if they assess any, shall find separately upon the claims of each person to damages, and each party shall have the same rights to appeal as are provided in other civil cases, and the proceedings shall be similar to the proceedings in other civil cases at law pending in said court. (L. '90, p. 721, § 52; Rem.-Bal., § 6377.)

See §§ 50 and 236.

57. Cost of Trial.

Any person who excepts to the appraisalment on account of the smallness or excessiveness of the amount found for or against such person shall not at any time be entitled to recover costs, unless he either increases or lessens the findings of the appraisers at least one-fourth, as the case may be. (L. '90, p. 721, § 53; Rem.-Bal., § 6378.)

See §§ 55 and 236.

58. New Appraisers—When Appointed.

In case the appraisers herein provided for should fail to meet from any cause, or having met, shall fail to decide, or in any other manner fail to discharge their duties, the court shall have power at any time thereafter to appoint new appraisers, or to extend their time for performing their duties. (L. '90, p. 721, § 54; Rem.-Bal., § 6379.)

See §§ 52, 54 and 236.

59. Condemnation Extends Only to Riparian Rights.

The right herein given to condemn the use of water shall not extend any further than to the riparian rights of persons to the natural flow of water through lands upon or abutting said stream or lakes, as the same exists at common law, and is not intended in any manner to allow water to be taken from any person that is used by said person himself for irrigation, or that is needed for that purpose by any such person. (L. '90, p. 722, § 57; Rem.-Bal., § 6382.)

See §§ 48 and 236.

CHAPTER VI.**ADJUDICATION OF PRIORITIES.****60. Owner of Ditch, Etc., to File Claim—Statement and Contents of.**

In order that all parties may be protected in their legal right to their use of water for irrigation, every person, association, or corporation owning or claiming any interest in any ditch or canal within any county shall, on or before the first day of June, A. D. eighteen hundred and ninety, file with the clerk of the superior court in said county a statement of claim, under oath, containing the name or names of persons claiming ownership, as aforesaid, to any such ditch or canal, the name thereof (if it has any), and if without a name, the owner or owners shall choose and attach a name to be therein stated by which such ditch or canal shall thereafter be known, a description of such ditch or canal, as to location of headgate, general course of ditch, the name of the natural stream or lake from which such ditch or canal draws its supply of water, the length, width, breadth, and grade thereof, as near as may be, the time, fixing a day, a month, and year, as the date of the appropriation of water by original construction, also by any enlargement or extension (if any such thereof may have been made), and the amount of water claimed by or under such construction, enlargement, or extension, and the present capacity, of the ditch or canal, and also the number of acres of land lying under and being or proposed to be irrigated by water from such ditch or

canal; and said statement shall be signed by the proper party or parties. (L. '90, p. 723, § 59; Rem.-Bal., § 6384.)

Commission appointed. See §§ 84 and 91-99.

See also §§ 9, 11, 46, 51, 78, 80 and 236.

61. Hearing and Adjudication of Priorities—Certificates.

When at any time after the first day of June, A. D. eighteen hundred and ninety, any one or more persons, association, or corporation, interested as owners of any ditch or canal in any water district, shall present to the superior court of any county a motion, petition or application in writing, moving or praying said court to adjudication of the priorities of right to use of water for irrigation between the several ditches or canals in such district, the said court shall, without necessary [unnecessary] delay, in case he shall deem it practicable to proceed in open court as prayed for, by an order to be entered of record upon such motion, petition, or application, appoint a day for commencing to hear and take evidence in such adjudication, at which time it shall be the duty of the court to hear all evidence which may be offered by or on behalf of any person, association, or corporation interested in any ditch or canal in such county, either as owner or consumer of water therefrom, in support of or against any claim or claims of priority of appropriation of water made by means of any ditch or canal, or by any enlargement or extension thereof, in such county, and consider all such evidence, together with any and all evidence, if any, which may have been heretofore [theretofore] offered and taken in such district in the same matter by any referee theretofore appointed under the provisions of said act* above herein mentioned, and also the arguments of parties or their counsel, and shall ascertain and find from such evidence, as near as may be, the date of the commencement of such ditch or canal, together with the original size and carrying capacity thereof as originally constructed, the time of the commencement of each enlargement or extension thereof, if any, with the increased capacity thereby occasioned, the time spent severally in such construction and en-

* Act referred to here is not made clear, as an examination of the whole act of which this section is a part shows no reference to any other act.

largement, or extension and re-enlargement, if any, the diligence with which the work was in each case prosecuted, the nature of the work as to difficulty of construction, and all such other facts as may tend to show the compliance with the law in acquiring the priority of right claimed for each such ditch or canal, and determine the matters put in evidence, and make and cause to be entered a decree determining and establishing the several priorities of right by appropriation of water of the several ditches or canals in such water district, concerning which testimony shall have been offered, each according to the time of its said construction and enlargement, or enlargements or extensions, with the amount of water which shall be held to have been appropriated by such construction and enlargements or extensions, describing such amount by cubic feet per second of time, if the evidence shall have sufficient data to ascertain such cubic feet, and if not, by width, depth, and grade, and such other description as will most certainly and conveniently show the amount of water intended as the capacity of such ditch or canal in such decree. Said court shall further order that each and every party interested, or claiming any such ditch or canal, shall receive from the clerk, on payment of a reasonable fee therefor, to be fixed by the court, a certificate under seal of the court, showing the date or dates and amount or amounts of appropriation adjudged in favor of such ditch or canal, under and by virtue of the construction, extension and enlargements thereof severally, also specifying the number of said ditch, and of each priority to which the same may be entitled by reason of such construction, extension and enlargement. (L. '90, p. 723, § 60; Rem.-Bal., § 6385.)

See also §§ 3, 4, 9, 11, 51, 78, 80, 93 and 236.

Water rights attached. See §§ 207 and 228.

Notice of proceedings. See § 62.

Proof of notice. See § 63.

Service, how made. See § 64.

62. Notice to Be Published—What to Contain.

Notice shall be given by the clerk of said court of the time so appointed, by publishing the same in one public newspaper in such county into which such water district may extend, which

notice shall be so published in such paper once in each week, until four successive weekly publications shall have been made, the last of which shall be on a day previous to the day appointed as aforesaid. Said notice shall contain a copy of said order, and shall notify all persons, associations, and corporations interested as owners in any ditch or canal in such water district, to appear at said court at the time so appointed, and file a statement of claims under oath, in case no statement has been before filed by him, her, or them, showing the ditch or canal, or two or more such, in which he, she, or they claim an interest, together with the names of all the owners thereof; which statement may be made by any one of the owners of such ditch or canal, for and in behalf of all; and also that all persons interested as owners or consumers may then and there present his, her or their proofs for or against any priority of right of water by appropriation sought to be shown by any party, by or through any such ditch or canal (either as owner or consumer of water drawn therefrom). Ten printed copies of said notice shall also be posted in ten public places in such water district not less than twenty days before the day so appointed, which copies shall be so posted by the party or parties moving the adjudication. (L. '90, p. 725, § 62; Rem.-Bal., § 6387.)

See also §§ 9, 11, 61, 63, 64, 78, 80 and 236.

63. Proof of Publication and Posting of Notices, How Made—Fees For.

Proof of the proper publication of said notice or notices in said public places shall consist in such case of the sworn certificate of the publisher of such newspapers, showing the publication to have been made in accordance with the provisions of the last preceding section of this chapter, which certificates shall be procured by the party or parties moving the adjudication, at his or their expense, and on the said certificate being filed, the clerk shall enter the amount of the printer's fee therefor as costs advanced by the parties procuring the same, which sum shall be counted to his, her, or their credit in distribution of costs. Proof of the posting of said printed copies shall be made by the affidavit of some credible person, certified to be

such by the clerk or other officer administering the oath, showing when, where, and how said copies were posted: *Provided*, That notices so posted shall be sufficient in counties where no papers are published. (L. '90, p. 726, § 63; Rem.-Bal., § 6388.)

See also §§ 9, 11, 61, 62, 78, 80 and 236.

64. Service of Notice, How Made and Proof of.

The party or parties moving such adjudication shall cause a printed or written copy of the notice aforesaid, published as aforesaid, to be served on every person, association, or corporation shown by the statement of claim on file, as provided, in section 62, which service shall be made within ten days from the time of the first publication by the clerk, by any credible person, certified by said clerk or referee to be such, by delivering such copy as aforesaid to the person to be served, if such person by due diligence, can be found in the county of his residence; if such person cannot be found as aforesaid, then by leaving such copy at his or her usual place of residence, if he or she have such residence, in charge of some person of the age of fourteen years or over, there residing; and on any corporation by delivering the copy to president or vice president or secretary or treasurer thereof, or the manager or superintendent in charge of their ditch or canal as authorized agent or attorney, or by leaving such copy at the office or usual place of business of such corporation, and the proof of such service shall be made by affidavit of the person or persons serving said copies, showing when and how such service has been made on such party. In case of parties not served in any manner as aforesaid, the clerk shall deposit in the postoffice, duly inclosed in an envelope with the proper postage stamp thereon, a copy directed to the address of such party shown in the statement of claim aforesaid, filed by him or her under section 60. (L. '90, p. 726, § 64; Rem.-Bal., § 6389.)

See also §§ 9, 11, 61, 62, 78, 80 and 236.

See also next section.

65. Certificate to Be Exhibited to Commissioner, Recording of.

The holder of such certificate shall exhibit the same to the water commissioner of the district when he commences the exercise of his duties, and such water commissioner shall keep a book in which shall be entered a brief statement of the contents of such certificate, and which shall be delivered to his successor, and said certificate, or statement thereof in his book, shall be the warrant of authority to said water commissioner for regulating the flow of water in relation to such ditch or canal. Said certificate shall be recorded at the same rate of charges as in cases of deeds of conveyance in the records of each county into which the ditch or canal to which such certificate relates shall extend, and said certificate, or said record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of so much of said decree as shall be recited therein in any suit or proceeding in which the same may be relevant. (L. '90, p. 725, § 61; Rem.-Bal., § 6386.)

See also §§ 9, 11, 78, 80, 84, 91 and 236.
Measuring boxes to be provided. See § 68.

66. Ditches and Appropriations Numbered in Decree in Order of Priority.

The court, in making such decree as aforesaid, shall number the several ditches and canals in the water district, concerning which adjudication is made, in consecutive order according to priority of appropriation of water thereby made by the original construction thereof, as near as may be, having reference to the date of each decree as rendered, and shall further number each several appropriation of water consecutively, beginning with the oldest appropriation, without respect to the ditches by means of which such appropriations were made, whether such appropriation shall have been made by means of construction, extension or enlargement; which number of each ditch or canal, together with the number or numbers of any appropriations of water held to have been made by means of the construction, extension, or enlargement thereof, shall be incorporated in said decree and certificate of the clerk, to be issued to the claimant as provided in section 61, so as to show the order in priority

of such ditch or canal, and also of such successive appropriation of water pertaining thereto, for the information of the water commissioner of the district in distributing water; such numbering to be as near as may be, having reference to date of decree as rendered. (L. '90, p. 727, § 65; Rem.-Bal., § 6390.)

See also §§ 3, 4, 9, 11, 61, 78, 80 and 236.
Measuring boxes to be provided. See § 68.
Register of priorities. See § 97.

CHAPTER VII.

HEADGATES.

67. Ditch Owners to Provide Head-Gates—How Constructed.

The owner of every irrigating ditch in this state shall be required to erect and keep in good repair the headgate at the head of his ditch. Such headgate, together with the necessary embankments, shall be of sufficient height and strength to control the water flowing therein at all ordinary stages. The framework of such headgate shall be constructed of a beam not less than four inches square, and the bottom, sides, and gate or gates shall be of plank not less than two inches in thickness. (L. '90, p. 712, § 23; Rem.-Bal., § 6347.)

See also next section.
Fish screens to be provided. See § 70.
§ 88 to some extent supersedes this section.
See also §§ 72, 73, 85, 90 and 236.

68. Measuring Boxes—Gates—Repairs.

It shall be the duty of every person entitled to the use of the waters of any natural stream or lake within this state for irrigation, stock or domestic purposes under a decree or judgment of any court of competent jurisdiction to place and keep in repair at the head of the ditch or canal through which such waters are diverted by him a suitable headgate and measuring box so constructed as to enable the officer executing such judgment or decree to measure to such person the quantity of water

to which he is entitled by virtue thereof. (L. '01, p. 27, § 1; Rem.-Bal., § 6394.)

Fish screens to be provided. See § 70.

§ 88 possibly supersedes this section.

Sheriff's duties. See § 80.

See §§ 65, 66, 67, 69 and 73.

Commissioner appointed. See §§ 84 and 85.

Tampering with headgates. See §§ 281 and 282.

69. Penalty for Failure to Keep Head-Gate in Repair.

Any person who shall wilfully fail, neglect or refuse to place and keep in repair the headgate and measuring box provided for in the preceding section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty nor more than one hundred dollars. (L. '01, p. 27, § 2; Rem.-Bal., § 6395.)

See § 68.

For penalties, see chapter XIX.

70. Screens Near State Fish Hatcheries.

Any person or persons, company or corporation owning, operating or controlling any canal, ditch or flume used for irrigating purposes shall erect on streams where state fish hatcheries are located and keep at the head of every such canal, ditch or flume, a wire screen or grill; the design and construction of the same shall be under the direction and approval of the state fish commissioner; said wire screen or grill shall be well constructed, and the meshes of said screen or grill shall not be farther apart than one-fourth of one inch, and shall be securely placed in the head of every such canal, flume or ditch, so as to prevent the ingress of any mountain trout or other food fishes from any of the lakes or streams of this state. (L. '05, p. 143, § 1; Rem.-Bal., § 5169.)

See also §§ 67, 68 and 88.

71. Violation Is Misdemeanor.

Any person or persons, company or corporation, or any agent of any company or corporation, violating the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than

fifty, nor more than five hundred dollars. (L. '05, p. 144, § 2; Rem.-Bal., § 5170.)

For penalties, see chapter XIX.

CHAPTER VIII.

REGULATING USE.

72. Duties of Ditch Owners.

The owner of any ditch shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others, and such owner shall make a tail-ditch so as to return the water in such ditch with as little waste as possible into the stream or lake from which it was taken. (L. '90, p. 711, § 0; Rem.-Bal., § 6344.)

See next section.

See also §§ 67, 90 and 236.

73. Duties of Ditch Owners as to Repairs.

The owners or constructors of ditches, canals, works, or other aqueducts, and their successors in interest using and employing the same to convey the waters of any stream, spring, or lake, whether the said ditches, canals, works, or other aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same and the embankments, flumes, or other conduits by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others. (L. '90, p. 716, § 38; Rem.-Bal., § 6363.)

See preceding section.

See also §§ 20, 31, 67, 68, 138, 236 and 257.

74. Unlawful to Take More Water Than Necessary—Penalty.

During the irrigation season it shall not be lawful for any person to run any greater quantity of water through his irrigating ditch than is absolutely necessary for irrigating his land, or the land of other persons, as provided for in section 31, and for domestic and stock purposes. And any person who shall wilfully violate the provisions of this section shall be deemed to be guilty of a misdemeanor, and upon conviction

thereof shall be fined in an amount not less than one hundred dollars nor more than one thousand dollars, which fine shall go into the county school fund of the county in which the offense is committed. (L. '90, p. 712, § 22; Rem.-Bal., § 6346.)

Penal provisions generally. See chapter XIX.

See also §§ 75, 79, 90 and 236.

Stealing water. See § 278.

75. Allotment of Water on Alternate Days.

In case the volume of water in any natural stream shall not be sufficient to supply the continued wants of the entire country through which it passes, then the judge of the superior court of the county—or in case the same stream shall run through more than one county, then the judge of the superior court of either county—through which said stream runs shall appoint three commissioners, as hereinafter provided, whose duty it shall be to apportion, in a just and equitable manner, a certain amount of said water, upon certain alternate days, in certain localities, as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal rights of all. (L. '90, p. 707, § 6; Rem.-Bal., § 6330.)

See next two sections; also §§ 84 to 89, inclusive.

See also §§ 74, 78, 91-99, 143 and 236.

76. Water to Be Prorated in Case of Deficiency.

If at any time any ditch from which water is or shall be drawn for irrigation shall not be entitled to the full supply of water from the natural stream or lake which supplies the same with water actually received into and carried by such ditch shall be divided among all the consumers of water from such ditch, as well as the owners, shareholders, and stockholders thereof, as the parties purchasing water therefrom, and the parties taking water, partly under and by virtue of holding shares, and partly by purchasing the same, shall each receive his share *pro rata*, according to the amount he (in cases in which several consume water jointly) shall then be entitled to, so that the owners and purchasers shall not suffer from a deficiency rising from the cause aforesaid, each in proportion to the amount of water

which he should have received in case no such deficiency of water had occurred. (L. '90, p. 710, § 17; Rem.-Bal., § 6341.)

See §§ 75, 77, 78, 91-99, 143 and 236; also §§ 84 to 89, inclusive.

77. Apportionment of Water in Time of Scarcity.

In case at any time the supply of water in any natural stream or lake is below the usual supply of water in said stream or lake, upon application of any person interested, the superior court of any county through which said stream or lake may flow shall appoint three commissioners, whose duty it shall be to immediately go upon said stream or lake, and apportion the water running in said stream or lake to the different persons entitled to use the said stream or lake, as may to them seem equitable and proper, having due regard for the vested rights of the persons so entitled to use water from said stream or lake: *Provided*, That said commissioners shall apportion to all persons upon such stream or lake for domestic purposes before any water is allowed to be taken from said stream or lake for the purposes of irrigation: *And provided*, That in case of unusual drought, said commissioners shall endeavor to apportion the water to the persons entitled to use the water from said stream or lake, so that the orchards and perennial plants upon farms of such persons so entitled to use such water shall be supplied with sufficient water to keep them alive. (L. '90, p. 708, § 9; Rem.-Bal., § 6333.)

See §§ 75, 76, 78, 91-99, 143 and 236; also §§ 84 to 89.

78. Rights to Be Based Upon Usual Flow of Water.

The vested rights to water, whenever called into question in any court, and whenever the same are required to be determined by any commissioners or commissioner, under the provision of the laws of this state, shall be based and determined upon the usual volume of water annually flowing in the natural streams and lakes of the state; and in the event of any of the said streams or lakes being unusually low, the rights of all persons to water out of the said stream or lake shall be reduced in accordance with the reduction of the water in said stream or lake

below the usual stage of water in said stream or lake at the time of year when the particular matter is brought before said commissioners, commissioner or court. (L. '90, p. 708, § 10; Rem.-Bal., § 6334.)

For adjudication of priorities, see chapter VI, §§ 60-66.
See §§ 75, 76, 77, 84, 143 and 236.

79. Use May Be Investigated.

Upon the application of any person interested, the superior court of any county in which any ditch, or the part of any ditch, constructed in accordance with section 14 *supra* is situated, may appoint three commissioners to inquire and determine whether or not more water is diverted by means of said ditch than is used, or than is to be properly used, during any season, for the purposes of irrigation, and the decision of said commissioners shall be final, and they shall have power to order and require the person having charge of said ditch to turn off such part of the water in said ditch as they may deem to be unnecessary for the use of the land being cultivated and to be cultivated during such season by water taken from said ditch; and any failure upon the part of the person controlling said ditch to comply with the order of said commissioners aforesaid shall be punished as a contempt of the superior court of the county appointing said commissioners; and all persons constructing ditches and taking water from the natural streams or lakes of this state, as provided for herein, shall take the same subject to all the conditions, restrictions, and regulations of this section, and of the laws hereafter made and provided. (L. '90, p. 709, § 12; Rem.-Bal., § 6336.)

See §§ 3, 11-14, 31, 34, 36, 74 and 236.

80. Enforcement of Decree of Apportionment by Sheriff.

In all cases where a decree has been or may be rendered by any superior court of this state or by the supreme court thereof determining and fixing the rights of persons to use the waters of any of the streams of this state for irrigation, stock or domestic purposes, it shall be the duty of the sheriff of the county wherein said waters are so used to enforce such decree

and to measure and distribute such waters among the persons entitled to the use thereof in accordance with the provisions of said decree: *Provided, however,* That such sheriff or his deputies shall only so act either when directed by the court or upon the written request of three or more persons entitled to use said waters upon the terms of such decree. (L. '01, p. 33, § 1; Rem.-Bal., § 6392.)

For adjudication of priorities, see chapter VI, §§ 60-66.

Measuring boxes to be provided. See § 68.

Regulation of rights. See also §§ 85, 93, 99.

See also §§ 84 and 91.

81. Sheriff and Deputies Allowed Traveling Expenses.

The sheriff and his deputies shall be allowed and paid all traveling and other necessary expenses incurred under the provisions herein, from the general county fund, to be audited and allowed by the board of county commissioners of the proper county. (L. '01, p. 33, § 2; Rem.-Bal., § 6393.)

See also §§ 84 and 91.

82. (Transposed and made § 259.)

83. (Transposed and made § 260.)

84. Superior Court Must Be Informed When Stream or Water Course Is to Be Used and Commission Appointed.

Whenever the owner, manager or lessee of a reservoir, constructed for the storage of water to be used for beneficial purposes, shall desire to use the bed of any stream, or other natural water course, for the purpose of carrying stored, or impounded water, from the reservoir to the user thereof, he shall, in writing, notify the superior court of any county within which said water is stored, carried or used, giving the date when it is proposed to discharge water from such reservoir, and the names of all persons and ditches entitled to its use. The court may then upon a proper showing as to the necessity therefor, appoint a commissioner with qualifications as hereinafter stated, whose duty it shall be to so close, regulate or adjust the head-gates of the several ditches taking water from such stream or natural water course, that no more water will flow into said ditch than it is entitled to receive from the water stored in the

reservoir or from the unregulated flow of the stream or from both, as determined by decrees of court or as shown by evidences of right properly recorded or by agreement between the parties in interest made with due regard to the legal rights of all, and any person who may be injured by the action of said commissioner, or by his failure to act as herein provided, may resort to any court of competent jurisdiction for such relief as he may be entitled to. (L. '07, p. 285, § 1; Rem.-Bal., § 6398.)

Commissioner appointed by county commissioners. See §§ 91-97.

Sheriff to regulate under court's order. See §§ 80-81.

For adjudication of priorities, see chapter VI, §§ 60-66.

Allotment of water. See §§ 75, 76 and 77.

See also §§ 68, 78 and 85-88.

85. Qualification of Commissioner.

Such commissioner shall possess such theoretical and practical knowledge of the science of hydraulics as will enable him to supervise the construction and operation of such measuring devices as may be necessary to place in any ditch, canal or stream for the purpose of measurement of water. Said commissioner shall hold said office and discharge the duties thereof from the date of his qualification until the first day of the October following, but said commissioner may be removed or discharged at the pleasure of the superior court appointing him. Said commissioner shall be paid for his said services at the rate of not to exceed seven dollars per day for each day he shall be actually employed in the duties of his office, to be paid by the county in which the work is performed. Said commissioner shall keep a true and just account of the time spent by him in the duties of his office and the time spent by him in the performance of his duties in each county, respectively, and shall present a true copy thereof, together with his bill for his said services, both verified by oath, to the board of county commissioners of the county in which the work may have been done. He shall render on the first day of each and every month to the superior court appointing him, a report, verified by oath, detailing the duties performed by him as such commissioner during the preceding month. The said board of county commissioners shall, upon approval thereof by the superior court appointing said

commissioner, allow the same and order a warrant drawn for the amount of said approved bill. (L. '07, p. 286, § 2; Rem.-Bal., § 6399.)

See also §§ 67, 68, 80, 84 and 93.

Allotment of water. See §§ 75, 76 and 77.

86. Oath—Bond.

Within ten days after his appointment, and before entering upon the duties of his office, said commissioner shall take and subscribe the oath of office prescribed by the constitution of the state, and shall file a bond to the State of Washington, with good and sufficient surety or sureties, to be approved by the superior court appointing said commissioner, in the sum of \$1,000, for the faithful and impartial discharge of his duties. (L. '07, p. 287, § 3; Rem.-Bal., § 6400.)

See §§ 84, 87 and 92.

87. May Appoint Assistants.

Said commissioner may, with the consent of the superior court appointing him, have power to employ and appoint assistants to aid him in the discharge of his duties whenever necessary. Such assistants shall take the same oath as the commissioner, and shall obey his instructions, and shall receive not to exceed five dollars per day for every day such assistant is so employed, to be paid in the manner provided for in section 85 hereof for the payment of the commissioner. (L. '07, p. 287, § 4; Rem.-Bal., § 6401.)

See also §§ 75, 76, 77, 84, 86, 94 and 95.

88. Appropriators Must Maintain Head-Gate.

It shall be the duty of every appropriator entitled to the use of water of any stream or other natural water course along which stored and impounded waters are being carried, to place and keep in repair in the ditch or canal through which the waters are diverted, a substantial headgate which shall be of such construction that it can be locked and kept closed by the commissioner; and such appropriator shall construct and maintain, when required by the commissioner, a flume or measuring device as near the head of such ditch as is practicable for the

purpose of assisting the commissioner in determining the amount of water that may be diverted into said ditch from the stream. Neglect or refusal on the part of any person to place and keep in repair such headgate or measuring box, or, when locked by the commissioner or his authorized assistant for the measurement or apportionment of water, any interference with or disturbance of same, shall be a misdemeanor and shall be punishable by a fine not exceeding \$100, nor less than \$20, or by imprisonment, not to exceed six months, or by both such fine and imprisonment, and the use of water through such device after having been interfered with, disturbed or changed shall be *prima facie* evidence of the guilt of the person benefited by such interference, disturbance or change. (L. '07, p. 287, § 5; Rem.-Bal., § 6402.)

See §§ 67 and 68, which are partially superseded by this section.

Fish screens to be provided. See § 70.

Penal provisions generally. See chapter XIX.

See also §§ 75, 76, 77 and 84.

89. Rights of Federal Government.

The federal government is hereby authorized to avail itself of all the provisions of this act. (L. '07, p. 288, § 6; Rem.-Bal., § 6403.)

90. Owners Defined.

The word "owner," wherever it appears in this division,* shall be construed to mean owners or persons having charge or control of the ditch and liable as the owner. (L. '90, p. 713, § 25; Rem.-Bal., § 6349.)

See also §§ 30 1/4, 98 and 236.

PUBLIC CONTROL OF IRRIGATION.

91. Irrigation—Commissioner of Irrigation—Water Districts—Salary of Commissioner.

Each county in this state shall be constituted an irrigation district, and for each of said districts a commissioner may be appointed by the county commissioners, whose salary, in each district, shall be fixed each year by the board of county commis-

* "Division" refers to §§ 67, 72, 74, 82 and 83.

sioners in each county, which said commissioner shall hold his office from the first Monday in June of each year for a period of one year, and shall be paid out of the county funds in each county, monthly; *Provided*, That when twelve freeholders of any county, who are irrigating lands in said county from any of the natural water courses, streams or lakes in said county, shall petition the board of county commissioners to appoint a water commissioner for such county, it shall become the duty of such county commissioners to, and they shall, upon such petition, appoint a water commissioner. (L. '90, p. 713, § 26; Rem.-Bal., § 6350.)

Formation of districts. See § 100 and notes.

Court may appoint commissioner. See § 84.

Decrees of court, enforcement of. See §§ 80-81.

Regulating flow of stored waters. See §§ 84-89.

See also §§ 36, 65, 75, 76, 77 and 236.

92. Commissioner's Oath and Bond.

Within ten days after his appointment, and before entering upon the duties of his office, said water commissioner shall take and subscribe the oath of office prescribed by the constitution of this state, and shall file a bond in such penalty, as may be required by the board of county commissioners in each county, payable to the county, for the faithful and impartial discharge of his duties. (L. '90, p. 713, § 27; Rem.-Bal., § 6351.)

See §§ 84, 86 and 236.

93. Duty of Commissioner.

It shall be the duty of said water commissioners to divide the water in the natural streams and lakes of their district among the several ditches taking water from the same, when there is in said stream or lake the average annual volume of water, according to the prior rights of each person, respectively. And it shall be the duty of said commissioner, in whole or in part, to shut and fasten, or cause to be shut and fastened, by order given to any sworn assistant, sheriff, or constable of the county in which the head of such ditch is situated, the headgates of any ditch or ditches heading in any of the natural streams or lakes of the district which, in the time of scarcity of water, shall not

be entitled to water by reason of the priority of the rights of others below them upon the same stream or lake: *Provided*, That it shall be his duty to see that persons who, during a year when there is an average volume of water in the streams and lakes, are entitled to water out of any stream or lake, and can use the same without injuring others having a prior right to the said water, have sufficient water for domestic and stock purposes, and for the preservation of orchards and perennial plants. (L. '90, p. 713, § 28; Rem.-Bal., § 6352.)

See also §§ 75, 76, 77, 80, 84, 85 and 236.

Adjudication of priorities. See §§ 60-66.

94. Compensation of Commissioner.

The water commissioner, as herein provided, shall be entitled to pay at the rate of four dollars per day for each day he shall be actually employed in the discharge of the duties of his office, not exceeding one hundred and twenty days in any one year, to be paid by the county for which he is appointed. (L. '90, p. 714, § 30; Rem.-Bal., § 6354.)

See also §§ 84, 87 and 236.

95. Assistant Commissioners—Oath and Compensation of.

Said water commissioner shall have the power, in case of any emergency, to employ one or more assistants to aid him in the discharge of his duties. Such assistant shall take the same oath as the water commissioner, and shall obey his instructions, and shall receive three dollars per day for every day such assistant is so employed, to be paid by the county for which such commissioner is appointed. (L. '90, p. 714, § 31; Rem.-Bal., § 6355.)

See also §§ 84, 87 and 236.

96. When Commissioners to Perform Duties of Office.

Said water commissioner shall not begin his work until he shall have been called upon by two or more owners of ditches in his district, by an application in writing, stating that there is necessity for his action, and such commissioner shall not continue performing services after the necessity thereof shall cease. (L. '90, p. 714, § 32; Rem.-Bal., § 6356.)

See §§ 84 and 236.

97. Register of Priorities, What to Contain—How Made.

It shall be the duty of the water commissioner of each district to cause to be prepared a book, to be entitled "The Register of Priorities of Appropriation of Water Rights for the Water Districts of the County of, State of Washington," within which he shall enter and preserve the priority of all persons taking water out of each particular stream or lake in his said district, which said priority shall be determined by said water commissioner from the decrees of any courts establishing such priorities, or where such priorities are not established by decrees, from any other legal source from which he can obtain the same, arranging and numbering the same in consecutive order, according to the dates of each respective right. (L. '90, p. 714, § 33; Rem.-Bal., § 6357.)

Order of priority established. See § 66.
See also § 236.

98. Words "Person," "He" and "Ditch" Construed.

The word "person," wherever used in this act,* shall be construed to mean either a natural person, an association, or corporation, or to be construed to mean persons; and the word "he" shall be construed to mean "she," "it" or "they"; and the word "ditch" shall be construed to include and to mean dike, flumeway and irrigating canal. (L. '90, p. 711, § 19; Rem.-Bal., § 6343.)

99. Public Service Commission to Fix Rates.

Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint as herein provided, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield

* "This act" refers to the same section as does § 240. See note. Also see § 30½ and § 90.

a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, volume and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable.

Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order, or rule, as hereinafter provided. (L. '11, p. 571, § 54.)

This section is not clear as to its application to the power of the public service commission to regulate irrigation, but § 8 of Ch. 117, L. '11, which is the public service commission law, contains in part as follows:

The term "water system," when used in this act, includes all real estate, easements, fixtures, personal property, dams, dikes, headgates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

The term "water company" when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their

lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating or managing any water system for hire within this state. (L. '11, p. 545, § 8.)

See § 80.

Rent fixed by city. See § 252.

CHAPTER IX.

IRRIGATION DISTRICTS.

100. Formation of Irrigation Districts.

Whenever fifty or a majority of the holders of title to, or of evidence of title to land susceptible of one mode of irrigation from a common source, and by the same system of works, desire to provide for the construction of works for the irrigation of the same, or desire to provide for the reconstruction, betterment, extension, purchase, operation or maintenance of works already constructed, they may propose the organization of an irrigation district under the provisions of this chapter; and when so organized, such district shall have the power conferred, or that may hereafter be conferred, by law upon such irrigation district. (L. '15, p. 605, § 1; Rem.-Bal., § 6416.)

See §§ 101, 102 and 111.

Control of irrigation. See § 91.

Changing boundaries. See §§ 147 and 148.

101. Proceedings to Establish—Election.

For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as an irrigation district. The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondsmen will pay all of the costs in case such

organization shall not be affected [effected]. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice by the petitioners stating the time of the meeting at which the same will be presented; and if any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. When the petition is presented, the board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as it may find to be proper and just, and shall establish and define the boundaries of the district: *Provided*, That said board shall not modify the boundaries so as to except from the operation of this chapter any territory within the boundaries of the district proposed by said petitioners, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which a water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited be included within such district; any lands having a partial or full water right included in any district shall be given equitable credit therefor in the apportionment of the assessments in this act provided: *And provided further*, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application of the board at the time of the hearing, be entitled to have such lands included in the district. The board of county commissioners shall, as soon as it has established the boundaries of said proposed district, enter an order establishing

and defining such boundaries, and ordering that three directors for such district be elected from the district at large, and designating a name for the proposed district, and calling an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the purpose of electing three directors at large. The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lie within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," and "Irrigation District—No," and, also the names of persons to be voted for as directors of the district: *Provided*, That where in this act publication is required to be made in a newspaper of any county, the same may be made in any newspaper of general circulation in any such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose. (L. '15, p. 605, § 2; Rem.-Bal., § 6417.)

See §§ 100, 102, 105, 108, 110, 159 and 170.

Election of directors. See § 104.

Organization of board. See § 111.

Election for dissolution of district. See §§ 182 and 188.

102. Conduct of Election.

Such election shall be conducted in accordance with the general election laws of the state: *Provided*, That no particular form of ballot shall be required. The said board of county commissioners shall meet on the second Monday next succeeding

such election, and proceed to canvass the votes cast thereat; and if upon such canvass it appears that at least two-thirds of all the votes cast are "Irrigation District—Yes," the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and must also immediately forward a copy thereof to the clerk of the board of county commissioners of each of the counties in which any portion of the district may lie; and no board of county commissioners of any county including any portion of such district shall, after the date of the organization of such district, allow another district to be formed including any of the lands in such district, without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold their offices, respectively, until their successors are elected and qualified. For the purposes of the election above provided for, the said board of county commissioners must establish a convenient number of election precincts in said proposed district, and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district. (L. '90, p. 672, § 3; Rem.-Bal., § 6418.)

See §§ 91, 100, 101, 105, 115 and 139.

103. Ballots for Irrigation District Elections Not Printed at Public Expense.

All ballots cast at elections for public officers within this state (except school and irrigation district officers and road overseers) shall be printed and distributed at public expense, as

hereinafter provided. The printing of ballots and cards of instruction for the electors in each county and the delivery of the same to the election officers, as hereinafter provided, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses; but the expense of printing and the delivering the ballots shall, in the case of municipal elections, be a charge upon the city or town in which such election shall be held. (L. '90, p. 400, § 1; Rem.-Bal., § 4888.)

See § 106.

104. Election of Directors—Oath and Bond.

There shall be elected in each organized irrigation district of this state, a board of three (3) directors who are electors of the district. An annual election to the office of director shall be held on the second Tuesday of December of each and every year, and the term of each director shall be three years from and after the first Tuesday of January next succeeding his election: *Provided*, That in the case of the three directors elected at any organization election called by the board of county commissioners, the three directors so elected shall serve until the first Tuesday of January following the first annual election; and at the first annual election there shall be elected three directors, one to serve for a term ending one year from the first Tuesday of January next following such election, and one to serve for a term of two years from the first Tuesday of January next following such election, and one to serve for a term of three years from the first Tuesday of January next following such election; and an election shall be held in each district thereafter on the second Tuesday in December in each year, at which election one director shall be elected for the full term of three years or until his successor is elected and qualified: *And provided further*, That in any irrigation district organized and existing under any law of this state prior to the taking effect of this act, the directors elected at the last election held therein shall hold office, and their terms of office, shall be as follows: That one of the three receiving the lowest number

of votes at the election last aforesaid, shall hold his office until the first Tuesday of January, 1914, the one receiving the next highest number of votes shall hold his office for one year from and after the first Tuesday of January, 1914, and the one receiving the highest number of votes shall hold his office for a term of two years from and after the first Tuesday of January, 1914; and an election shall be held in each of the districts last aforesaid on the second Tuesday of December of the year 1913, and on the second Tuesday of December in each year thereafter, at which one director shall be elected for the full term of three years, or until his successor is elected and qualified. In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had, and the person so appointed shall serve until the next annual election of directors, when an election by the district shall be had to fill the vacancy for the remainder of the unexpired term. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office, and shall execute an official bond to the district in the sum of twenty-five hundred dollars (\$2,500.00), conditioned for the faithful discharge of the duties of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was affected [effected], and said oath and bond shall be recorded in the office of the county clerk of said county and filed with the secretary of the board of directors. The secretary of the district shall take and subscribe a written oath of office and execute an official bond in the sum of not less than twenty-five hundred dollars (\$2,500.00), to be fixed by the board of directors, and which said bond shall be approved and filed as in the case of the bond of a director: *Provided*, That in case any irrigation district is appointed fiscal agent of the United States or is authorized by the United States in connection with any federal irrigation project to make collections of money for or on behalf of the United States, such secretary and each such director and the

county treasurer shall each execute a further additional official bond in such sum, respectively, as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his respective office, and the faithful discharge by the district of its duties as fiscal or other agent of the United States in such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties; the bonds executed by the said officers shall be secured at the cost of the district. (L. '15, p. 608, § 3; Rem.-Bal., § 6419.)

See §§ 101, 159 and 170.

Organization of board. See § 111.

Bond election. See § 115.

105. Notice of Election—Officers of Election.

Fifteen days before any election held under this chapter subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. (L. '90, p. 674, § 5; Rem.-Bal., § 6420.)

Authorizing election. See § 101.

Election precincts established. See § 102.

See § 106.

106. Conduct of Election.

The inspector is chairman of the election board, and may—

First, administer all oaths required in the progress of an election.

Second, appoint judges and clerks, if during the progress of the election any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at nine o'clock A. M. on the morning of the election, and kept open until four o'clock P. M., when the same must be closed. The provisions of the general election law of this state concerning the form of ballots to be used shall not apply to elections held under this chapter. (L. '90, p. 674, § 6; Rem.-Bal., § 6421.)

Ballots. See § 103.

Officers of election. See § 105.

See also §§ 107 and 115.

107. Canvassing Votes.

Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened. As soon as the polls are closed, the judges shall open the ballot-box and commence counting the votes; and in no case shall the ballot-box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the inspector or one of the judges, who shall open them and read aloud the names of each person contained therein, and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector

or judge. The counting of votes shall be continued without adjournment until all have been counted. (L. '90, p. 675, § 7; Rem.-Bal., § 6422.)

Polls open. See § 106.

108. Returns.

As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerks, judges, and the inspector. One of said certificates, with the poll list and the tally paper, to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector, during the counting thereof, in the order in which they are entered upon the tally lists by the clerk; and said ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector, in the presence of the judges and clerks, and endorsed "Election returns of (naming the precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months; and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted. (L. '90, p. 675, § 8; Rem.-Bal., § 6423.)

See §§ 101, 109 and 115.

109. Canvass of Returns.

No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satis-

factorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public, and by opening the returns and estimating the vote of the district, for each person voted for, and declaring the result thereof. (L. '90, p. 676, § 9; Rem.-Bal., § 6424.)

Demand for recount. See §§ 108 and 115.

110. Entry of Returns—Certificate.

The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

First, The whole number of votes cast in the district;

Second, The names of the persons voted for;

Third, The office to fill which each person was voted for;

Fourth, The number of votes given in each precinct to each of such persons;

Fifth, The number of votes given in each division for the office of director.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election signed by him and authenticated with the seal of the board. In case of a vacancy in the office of director the vacancy shall be filled by appointment by the board of county commissioners of the county where the office of such board of directors is situated, from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election of said district and until his successor is elected and qualified. (L. '95, p. 435, § 4; Rem.-Bal., § 6425.)

See §§ 101 and 115.

111. Organization of Board—Powers and Duties.

The three directors of the district shall constitute the board of directors of such district, and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the board and principal place of business of the district shall be at some place in the county in which the organization was affected [effected], to be designated by the board. The board of directors shall hold a regular monthly meeting, at its office, on the first Tuesday in every month, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings may be called at any time by a majority of the board, but in case the three members of the board do not join in said order, the secretary shall give the member not joining five (5) days notice of such meeting. The order or notice calling any special meeting shall specify what business shall be transacted, and none other than that specified shall be transacted at such special meeting. All meetings of the board must be public. Two members shall constitute a quorum for the transaction of business, but in all matters requiring action by the board there shall be a concurrence of at least two members of said board. All records of the board shall be open to inspection of any elector during business hours. The board shall have the power, and it shall be its duty to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, and to establish equitable by-laws, rules and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: *Provided*, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the dis-

tract in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto. The by-laws, rules and regulations must be printed in convenient form for distribution in the district. All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes of the assessment and collection of taxes, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: *Provided*, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership. The board of directors shall have the power to sell, lease, or rent the use of water and power or either for delivery to occupants of public or other lands situated within or adjacent to the district, or to municipal corporations, or at such prices and on such terms as it deems best: *Provided*, No water or power shall be furnished for use outside of said district until all demands and requirements for water and power for use in said district are furnished and supplied by said district: *And provided further*, That as soon as any public land situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his proportion of water as in case of other land owners, upon payment by him of such sums as shall be determined by the board, and at the time to be fixed by the board, which sum shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become

subject to all taxes and assessments of the district thereafter imposed. (L. '15, p. 610, § 4; Rem.-Bal., § 6426.)

See §§ 100, 101, 104, 112, 114 and 171.

112. Authority of Board.

The board, and its agents and employees, shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, power plants, power sites or power lines and the line for any canal or canals, and the necessary branches or laterals for the same, on any lands which may be deemed best for such location. Said board shall also have the power to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and irrigation works, including canals and works constructed or being constructed by private owners, or any other person, lands for reservoirs for the storage of needful waters and all necessary appurtenances. The board may also construct the necessary dams, reservoirs and works for the collection of water for said district, and may enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done in order to carry out the purposes of this act; and in carrying out the aforesaid purposes the bonds of the district may be used by the board, at not less than ninety per centum of their par value in payment. The board may enter into any obligation or contract with the United States for the construction, reconstruction, betterment, extension, sale or purchase, or operation and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act and all amendments or extensions thereof, and the rules and regulations established thereunder, or it may contract with the United States for a water supply under any act of congress providing for and permitting such contract, or for the collection of money due or to become due to the United States or for the assumption of the control and management of the works;

and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States as payment or as security for future payment at not less than ninety per centum of their par value, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment provided in section 6437 of Remington & Ballinger's Annotated Codes and Statutes of Washington an amount sufficient to meet each year all payment accruing under the terms of any such contract. The board may accept on behalf of the district appointment of the district as fiscal agent of the United States or other authorization of the district by the United States to make collections of money for or on behalf of the United States in connection with any federal reclamation project, whereupon the district, and the county treasurer for the district, shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto. The use of all water required for the irrigation of the lands, within any district, together with rights-of-way for canals, laterals, ditches, sites for reservoirs, power plants, sites and lines and all other property required in fully carrying out the purposes of the organization of the district is hereby declared to be a public use; and in condemnation proceedings to acquire any property or property rights for the use of the district, the board of directors shall proceed in the name of the district, in the manner provided in this state in cases of appropriation of lands, real estate and other property by private corporations: *Provided*, That the irrigation district at its option pursuant

to resolution to that end duly passed by its board of directors may unite in a single action proceedings for the acquisition and condemnation of different tracts of land needed by it for rights-of-way for canals, laterals, power plants, sites and lines and other irrigation works which are held by separate owners. And the court may on the motion of any party consolidate into a single action separate suits for the condemnation of rights-of-way for such irrigation works whenever from motives of economy or the expediting of business it appears desirable so to do: *Provided, further,* There shall be a separate finding of the court or jury as to each tract held in separate ownership. (L. '15, p. 612, § 5; Rem.-Bal., § 6427.)

Powers and duties of board. See § 111.

See also §§ 113, 147, 164, 165 and 174.

Contract with United States. See § 115.

Payment of bonds. See § 117.

Levy of assessments. See § 122.

Assessment is lien. See § 123.

113. Title of Property.

The legal title to all property acquired under the provisions of this chapter shall immediately, and by operation of law, vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this chapter; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided: *Provided, however,* That any property so acquired by the district may be conveyed to the United States insofar as the same may be needed for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into with the United States pursuant to this act. (L. '15, p. 614, § 6; Rem.-Bal., § 6428.)

See § 112.

114. Powers of Board—Conveyances.

The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of such irrigation district, to and for the uses and purposes herein expressed,

and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this chapter, or acquired in pursuance thereof; and in all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district. (L. '90, p. 679, § 14; Rem.-Bal., § 6429.)

See § 111.

115. Cost of Construction—Bond Elections—Bonds—Assessments.

For the purpose of construction, reconstruction, betterment, extension or acquisition of the necessary property and rights therefor, and otherwise carrying out the provisions of this chapter, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the fund for any such purpose has been exhausted by, or shall appear to be inadequate to meet, the expenditures herein authorized therefrom, and the board deems it necessary or expedient to raise additional money for said purpose, estimate and determine the amount of money to be raised, and shall immediately thereafter call a special election. At such election shall be submitted to the electors of said district possessing the qualifications prescribed by this chapter the question whether or not the bonds of said district in the amount so determined shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this chapter governing the

election of the officers: *Provided*, That no informality in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes," and "Bonds—No," or words equivalent thereto. If a majority of the votes cast are cast "Bonds—Yes," the board of directors shall immediately cause bonds in that amount to be issued. If a majority of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record; but if contract is made or is to be made with the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington provided and bonds are not to be deposited with the United States in connection with such contract, the question submitted at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state under the terms of what act or acts of congress contract is proposed to be made and the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest. The ballots for such election shall contain the words "Contract with the United States—Yes," and "Contract with the United States—No," or words equivalent thereto. And whenever thereafter said board, in its judgment, deems it for the best interests of the district that the question of issuance of bonds for said amount, or any amount, or the question of entering into a contract with the United States, shall be submitted to said electors, it shall so declare said record in its minutes, and may thereupon submit such question to said electors in the same manner and with like effect as at such previous election. Said bonds shall be payable in gold coin of the United States, in ten series, as follows, to-wit: At the expiration of eleven years, five per cent of the whole number of bonds; at the expiration of twelve years, six per cent; at the expiration of thirteen years, seven per cent; at the expiration of fourteen years, eight per cent; at the expiration of fifteen years, nine per cent; at the expiration of sixteen years, ten per cent; at the expiration [of] seventeen

years, eleven per cent; at the expiration of eighteen years, thirteen per cent; at the expiration of nineteen years, fifteen per cent; at the expiration of twenty years, sixteen per cent, and shall bear interest at the rate of six per cent per annum, payable semi-annually, on the first day of January and July of each year. The principal and interest shall be payable at the place designated therein. Said bonds shall be each of the denomination of not less than one hundred nor more than five hundred dollars; shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed thereto: *Provided*, That bonds deposited with the United States in payment or in pledge may call for the payment of such interest not exceeding six per cent per annum, may be of such denominations, and call for the repayment of the principal at such times as may be agreed upon between the board and the secretary of the interior. Each issue shall be numbered consecutively as issued, and the bonds of each issue shall be numbered consecutively and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president of the board and the secretary. The signatures of the president and secretary may, however, appear by lithographic fac simile. Said bonds shall express upon their face that they were issued by authority of this act, stating its title and date of approval, and shall also state the number of issue of which such bonds are a part. The secretary shall keep a record of bonds sold, their number, the date of sale, the price received and the name of the purchaser. In case the money received by the sale of all bonds issued be insufficient for the completion of plans of the canals and works adopted, and additional bonds be not voted, or a contract calling for additional payment to the United States be not authorized and made, as the case may be, it shall be the duty of the board of directors to provide for the completion of said plans by levy of assessments therefor. It shall be lawful for any irrigation districts which have heretofore issued bonds under the law then in force, to issue in place thereof an amount of

bonds not in excess of such previous issue, and to sell the same, or any part thereof, as hereinafter provided, or exchange the same, or any part thereof, with the holders of such previously issued bonds which may be outstanding, upon such terms as may be agreed upon between the board of directors of the district and the holders of such outstanding bonds: *Provided*, That the question of such reissue of bonds shall have been previously voted upon favorably by the legally qualified electors of such district in the same manner as required for the issue of original bonds, and the said board shall not exchange any such bonds for a less amount in par value of the bonds received; all of such old issue in place of which new bonds are issued shall be destroyed whenever lawfully in possession of said board: *Provided, further*, That the board shall have the power to provide for and agree and to include in the stipulations contained in the bonds of the district that no interest payment shall be made on said bonds during the first three (3) years after the date of the issue thereof, and that in lieu thereof the rate of interest shall be increased for a succeeding period of years sufficient to include and cover the interest for said three [year] period, together with interest on the deferred interest payments, but in no case shall the aggregate of interest paid on principal exceed an average of six per cent during the entire life of the bonds. (L. '15, p. 615, § 7; Rem.-Bal., § 6430.)

Election precincts. See § 102.
Election of officers. See §§ 102-110.
Contract with United States. See § 112.
Sale of bonds. See § 116.
Payment of bonds. See §§ 117 and 134.
Assessment of property. See § 118.
Levy of assessments. See § 122.
Contracts for construction. See § 135.
See also §§ 137, 154, 166, 174 and 176.
Special elections. See § 141.

116. Sale of Bonds.

The board may sell the bonds of the district or pledge the same to the United States from time to time in such quantities as may be necessary and most advantageous to raise money for the construction, reconstruction, betterment or extension of such

canals and works, the acquisition of said property and property rights, the assumption of indebtedness to the United States for the district lands, and otherwise to fully carry out the objects and purposes of the district organization, and may sell such bonds, or any of them, at private sale whenever the board deems it for the best interests of the district so to do. The board of directors shall also have power to sell said bonds, or any portion thereof, at private sale, and accept in payment therefor labor and material necessary for the construction of its proposed canals or irrigation works, power plants, power sites and lines in connection therewith, whenever the board deems it for the best interests of the district so to do. If the board shall determine to sell the bonds of the district, or any portion thereof, at public sale, the secretary shall publish a notice of such sale for at least three (3) weeks in such newspaper or newspapers as the board may order. The notice shall state that sealed proposals will be received by the board, at its office, for the purchase of the bonds to be sold, until the day and hour named in the notice. At the time named in the notice, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids: *Provided*, That such bonds shall not be sold for less than ninety per cent of their face value. (L. '15, p. 618, § 8; Rem.-Bal., § 6431.)

Bond elections and contract with United States. See § 115.

Approval of bonds by court. See § 174.

Railroads may buy bonds. See § 262.

117. Payment of Bonds—Interest.

Said bonds and interest thereon and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington provided, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments as herein-

after provided. And in addition to this provision and the other provisions herein made for the payment of said bonds and interest thereon as the same may become due, said bonds, or the contract with the United States accompanying which bonds have not been deposited with the United States, shall become a lien upon all the water rights and other property acquired by any irrigation district formed under the provisions of this chapter, and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery and other works and improvements acquired, owned or constructed by said irrigation district, and if default shall be made in the payment of the principal of said bonds or interest thereon, or any payment required by the contract with the United States, according to the terms thereof, the holder of said bonds, or any part thereof, or the United States as the case may be, shall have the right to enter upon and take possession of all the water rights, canals, ditches, flumes, feeders, storage reservoirs, machinery, property and improvements of said irrigation district, and to hold and control the same, and enjoy the rents, issues and profits thereof, until the lien hereby created can be enforced in a civil action in the same manner and under the same proceedings as given in the foreclosure of a mortgage on real estate. This section shall apply to all bonds heretofore issued or any contract heretofore made with the United States, or which may hereafter be issued or made by any district. (L. '15, p. 619, § 9; Rem.-Bal., § 6432.)

Contract with United States. See §§ 112 and 115.
Bond election. See § 115.
See § 134.

118. Assessment of Property.

Assessments made in order to carry out the purposes of this act shall be made in proportion with the benefits accruing to the lands assessed. The secretary must, between the first Monday in March and the first Monday in June, in each year, prepare an assessment book, with appropriate headings, in which must be listed all the lands within the district. In such

book must be specified, in separate columns, under the appropriate headings:

First. The name of the person to whom the property is assessed. If the name is not known to the secretary the property shall be assessed to "unknown owners;"

Second. Land by township, range, section or fractional section, and when such land is not a legal subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town.

Third. The ratio of benefits;

Fourth. The fourth column shall be left blank for the extension of the assessment.

Fifth. Such other things as the board of directors may require.

Any property which may have escaped the payment of any assessment for any year, shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for such current year. (L. '15, p. 620, § 10; Rem.-Bal., § 6433.)

Board to levy assessment. See § 115.

See §§ 119, 130, 161, 173, 184 and 196.

Equalization. See § 120.

Collection. See § 124.

119. Deputy Assessors—Compensation.

The board of directors must allow the secretary as many deputies, to be appointed by them, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix a compensation of such deputies for the time actually engaged; nor must any allowance be made but for work between the first Monday in March and the first Monday in August in each year. (L. '95, p. 440, § 9; Rem.-Bal., § 6434.)

Assessment of property. See § 118.

120. Equalization..

On or before the first Monday in August, in each year, the secretary must complete his assessment book and deliver it to the board, who must immediately give a notice thereof, and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment book must remain in the office of the secretary for the inspection of all persons interested. (L. '95, p. 441, § 10; Rem.-Bal., § 6435.)

Assessment of property. See § 118.

See also §§ 121, 130 and 196.

121. Equalization of Assessments.

Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may change the same as may be just. The secretary of the board shall be present during its session, and note all changes made at said hearing; within ten days after the close of the session he shall have the assessment roll completed as finally equalized by the board. (L. '15, p. 621, § 11; Rem.-Bal., § 6436.)

See §§ 120-124, 137, 184 and 196.

122. Levy of Assessments to Meet Bonds.

The board of directors shall then levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States accompanying which bonds of the district

have not been deposited with the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington provided, and at the expiration of ten years after the issuing of the bonds of any issue, the board must, from year to year, increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as assessments on property therein enumerated. Similar levy and assessment shall be made for the expense fund which shall include operation and maintenance costs for the ensuing year. The assessments, when collected by the county treasurer, shall constitute a special fund, or funds as the case may be, to be called respectively the "Bond Fund of..... Irrigation District," the "Contract Fund of..... Irrigation District" and the "Expense Fund of..... Irrigation District." In case of neglect or refusal of the board of directors to cause such assessment or levy to be made as herein provided, then the assessment shall be made, equalized and levied by the board of county commissioners of the county in which the office of the board of directors is situated shall cause an assessment roll for the said district to be prepared, and the board of county commissioners shall make the levy required by this chapter in the same manner and with like effect as if the same had been made by the said board of directors, and all expenses incident thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his official bond, as in other cases. (L. '15, p. 621, § 12; Rem.-Bal., § 6437.)

Contract with United States. See § 112.
 Bonds, assessments. See § 115.
 See §§ 123, 124, 130 and 137.

123. Lien of Assessment.

The assessment upon real property shall be a lien against the property assessed, from and after the first Monday in March in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the first day in December of such year, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments and for general taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, accompanying which bonds of the district have not been deposited with the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract. (L. '15, p. 622, § 13; Rem.-Bal., § 6438.)

Contract with United States. See § 112.

See §§ 122 and 128.

124. Notice—Collection.

On or before the first day of November the secretary must deliver the assessment book to the county treasurer of the county in which the office of the board of directors is situated, who shall within twenty days publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable at the office of said county treasurer, and will become delinquent at five o'clock in the afternoon on the 31st day of December next thereafter, unless sixty per cent. thereof shall then have been paid, and that if thus allowed to become delinquent a penalty of five per cent will be added to the amount thereof and that if sixty per cent thereof be paid on or before said 31st day of December the remainder thereof will not become delinquent until April 30th next following. The notice shall be published once a week

for four successive weeks, and posted for the same length of time in some public place in said district. The county treasurer must mark the date of payment of any assessment in the assessment book, opposite the name of the person paying, and give a receipt to such person, specifying the amount of the assessment and the amount paid, with the description of the property assessed. On the 31st day of December of each year, all unpaid assessments are delinquent unless 60% shall have been paid as aforesaid, and thereafter the treasurer must collect thereon for the use of the district the aforesaid penalty of five per cent. The district shall pay to the county from the five per cent. penalties and other costs received by the treasurer in the collection of delinquent taxes, the amounts actually expended by the treasurer in performing the duties of *ex-officio* collector and treasurer of the district. (L. '15, p. 623, § 14; Rem.-Bal., § 6439.)

Assessment of property. See §§ 118-123.
See also §§ 125, 133, 141, 184 and 196.

125. Publication of Delinquent Lists.

On or before the first day of February, the county treasurer must publish the delinquency list, which must contain the names of the persons and description of the property delinquent, and the amount of the assessments and costs due opposite each name and description in all cases where payment of 60% of the assessment has not been made on or before the 31st day of December next preceding; likewise on or before May 15th he must publish the delinquency list of all persons delinquent in the payment of the installment of 40% as in this act provided. He must append to and publish with the delinquent list a notice that unless the assessments delinquent, together with costs and percentage are paid, the real property upon which such assessments are a lien will be sold at public auction. The publication must be made once a week for three successive weeks, in a newspaper published in each of the counties comprised in the district. The publication must designate the time and place of sale. The time of sale must not be less

than twenty-one nor more than twenty-eight days from the first publication, and the place must be at some point designated by the treasurer. (L. '15, p. 624, § 15; Rem.-Bal., § 6440.)

See § 124.

Sale. See § 126.

Property to be sold. See § 127.

Deed. See § 130.

126. Penalty—Sale.

The secretary must collect, in addition to the assessment due on the delinquent list and five per cent. added, fifty cents on each lot, piece or tract of land separately assessed, which must go to the district for preparing the list. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice, the secretary, between the hours of ten o'clock A. M. and three o'clock P. M., must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically, or in the numerical order of the lots or blocks, until completed. He may postpone the day of commencing sale, or the sale from day to day, but the sale must be completed within three weeks from the day first fixed. (L. '95, p. 443, § 13; Rem.-Bal., § 6441.)

Delinquent lists. See § 125.

Property to be sold. See § 127.

Redemption. See § 129.

Deed. See §§ 130, 132 and 194.

127. What Property to Be Sold—Re-Sale—Certificate.

The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the secretary, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the secretary may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including two dollars to the secretary for duplicate of certificate of sale, is the purchaser. Said secretary shall pay said two dollars into the treasury of said district. If the purchaser does not pay the assessment and costs before ten o'clock A. M. the fol-

lowing day, the property on the next sale day must be resold for the assessment and costs. But in case there is no purchaser in good faith for the same on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the irrigation district within which such lands are situated as the purchaser, and the duplicate certificate delivered to the secretary of the district, and filed by him in the office of the directors. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the secretary shall make an entry, "Sold to the district," and he will be credited with the amount thereof in settlement. An irrigation district, as a purchaser at such sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to right of redemption herein provided, may be conveyed by deed, executed and acknowledged by the president and secretary of said board: *Provided*, That authority to so convey must be conferred by resolution of the board, entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property. After receiving the amount of assessments and costs, the secretary must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the secretary and one copy delivered to the purchaser, and the other filed in the office of the county clerk of the county in which the land is situated. (L. '95, p. 443, § 14; Rem.-Bal., § 6442.)

Delinquent lists. See § 125.

Sale. See § 126.

Record of sale. See § 128.

Redemption. See § 129.

Effect of deed. See § 130.

128. Record of Sales.

The secretary, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of the sale, purchasers' names and amount paid, regularly number the description on the margin of the book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use. On filing the certificate with such county clerk the lien of the assessments vests in the purchaser and is only divested by the payment to him, or to the secretary for his use, of the purchase money and one per cent. per month from the day of sale until redemption. (L. '95, p. 444, § 15; Rem.-Bal., § 6443.)

Lien of assessment. See § 123.

Certificate. See § 127.

129. Redemption—Deed.

A redemption of the property sold may be made by the owner or any party in interest within two years from the date of purchase. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and when made to the treasurer he must credit the amount paid to the person named in the certificate and pay it on demand to the person or his assignee. In each report the treasurer makes to the board of directors he must name the persons entitled to redemption money and the amount due each. On receiving the certificate of sale the county auditor must file it and make an entry in a book similar to that required of the treasurer. On the presentation of the receipt of the person named in the certificate, or of the treasurer for his use, of the total amount of the redemption money, the auditor must mark the word "redeemed," the date and by whom redeemed on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within two years from the sale the treasurer must make to the purchaser, or his assignees, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed

the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar for making such deed: *Provided*, If redemption is not made of any lot, parcel or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents and any person or district holding a duplicate certificate covering more than one tract of land, the several parcels or tracts of land mentioned in the certificate may be included in one deed. (L. '15, p. 624, § 16; Rem. Bal., § 6444.)

Sale. See § 126.

What property to be sold. See § 127.

See § 130.

130. Effect of Deed.

The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is *prima facie* evidence that—

First, The property was assessed as required by law;

Second, The property was equalized as required by law;

Third, That the assessments were levied in accordance with law;

Fourth, The assessments were not paid;

Fifth, At a proper time and place the property was sold as prescribed by law and by the proper officers;

Sixth, The property was not redeemed;

Seventh, The person who executed the deed was the proper officer. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessments by the secretary, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein, free from all incumbrances, except when the land is owned by the United States or this state, in which case it is *prima facie* evidence of the right of possession. (L. '95, p. 445, § 17; Rem.-Bal., § 6445.)

Certificate of sale. See § 127.

Assessment. See § 118.

Equalization. See § 120.

Levy of assessments. See § 122.

Delinquent lists. See § 125.

Sale of property. See §§ 126 and 127.

Redemption. See § 129.

131. List of Evidence.

The assessment book or delinquent list, or a copy thereof, certified by the secretary, showing unpaid assessments against any person or property, is *prima facie* evidence of the assessment of the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessment have been complied with. (L. '95, p. 446, § 18; Rem.-Bal., § 6446.)

132. Sale as in Rem.

When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable. (L. '90, p. 688, § 32; Rem.-Bal., § 6447.)

Sale of property. See §§ 126 and 127.

133. Secretary to Settle, When.

On the first Monday in each month the secretary must settle with the board for all moneys collected for assessments and pay the same over to the treasurer of the county; and within six days thereafter he must deliver to and file in the office of the board of directors a statement under oath, showing—

First, An account of all his transactions and receipts since his last settlement;

Second, That all money collected by him as secretary has been paid to the county treasurer. The secretary shall also file in the office of the board on said first Monday in each month the receipt of the treasurer of the county for the money so paid. (L. '95, p. 446, § 19; Rem.-Bal., § 6448.)

Collection. See §124.

134. Payment of Bonds.

Upon the presentation of the coupons due to the treasurer of said county he shall pay the same from said bond fund belonging to such district and deposited with such treasurer.

Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least four weeks in some daily newspaper which said board may deem advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted: *Provided*, That no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer of said county, under the direction of the board, in United States gold bearing bonds, or the bonds of the state, which shall be kept in said bond fund, and may be used to redeem said district bonds whenever the holders thereof may desire. (L. '95, p. 446, § 20; Rem.-Bal., § 6449.)

See §§ 115, 117 and 137.

135. Contracts for Construction—Call for Bids—Bond.

Any person to whom a contract may have been awarded for the construction of a canal or any of the works of the district, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to said district for its use, for at least 25 per cent of the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public works, and as may be required by resolution of the board. All works shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board

of directors shall determine to let a contract or contracts for the doing of said work or the furnishing of said materials, a notice calling for sealed proposals shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let said work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence: *Provided*, That the provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material: *Provided further*, That the provisions of this section shall not apply in the case of any contract between the district and the United States. (L. '15, p. 625, § 17; Rem.-Bal., § 6450.)

Cost of construction. See §§ 115 and 137.

Officer not to be interested in contract. See § 140.

136. Disbursements, How Made.

No claim shall be paid by the county treasurer until allowed by the board, and only upon a warrant signed by the president and countersigned by the secretary: *Provided*, That the board may draw from time to time from the construction fund, and deposit in the county treasury of the county where the office of the board is situated, any sum under or in excess of the sum of twenty-five thousand dollars. The county treasurer of said county is hereby authorized and required to receive and receipt for the same, and place the same to the credit of said district, and he shall be responsible upon his official bond for the safe keeping and disbursement of the same, as in this act provided. He shall pay out the same, or any portion thereof, to the secretary of the district only, and only upon the order of the

board, signed by the president and attested by the secretary. The said county treasurer shall report in writing, on the second Monday in each month, the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said report shall be verified and filed with the secretary of the board. The secretary shall also report to the board, in writing, on the first Monday in each month, the amount of money in the county treasury belonging to the district, the amount of receipts for the month preceding, and the amount and items of expenditures, and said report shall be verified and filed with the secretary of the board. (L. '95, p. 448, § 22; Rem.-Bal., § 6451.)

See next section.

Refunding assessments. See § 178.

137. Construction and Operating Funds.

The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid by the board of directors out of the funds received from bond sales. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portions of said canal and works as are completed and in use, the board may either fix rates or tolls and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expense by a levy of assessment therefor, or by both said tolls and assessment; if by the latter method, such levy shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this chapter,

relating to the payment of principal and interest of bonds herein provided for, and shall be made at the same time. (L. '15, p. 626, § 18; Rem.-Bal., § 6452.)

Cost of construction. See § 115.

Contracts for construction. See § 135.

Disbursements. See § 136.

Levy to pay bonds. See § 122.

Equalization of assessments. See § 121.

Payment of bonds. See § 134.

Excess liability void. See § 142.

138. Crossing Streams, Roads, Etc.

The board of directors shall have power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch, or flume, which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing, or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as here provided in respect to the taking of land. The right-of-way is hereby given, dedicated, and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district. (L. '90, p. 691, § 38; Rem.-Bal., § 6453.)

For the right to take ditches across roads. See also §§ 257-261.

Condemnation. See §§ 18, 24-30, 46, 47 and 73.

139. Salaries.

The board of directors shall each receive two dollars per day and mileage at the rate of 5 (five) cents per mile in at-

tending the meetings, and actual and necessary expenses paid while engaged in official business under order of the board. The board shall fix the compensation to be paid to the secretary named in this chapter, to be paid out by warrant drawn on the county treasurer out of funds belonging to said district on deposit with the treasurer of said county: *Provided*, That said board shall, upon the petition of at least fifty, or a majority of those having title or evidence of title within such district therefor, submit to the electors, at any general election, a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are declared under this chapter. (L. '95, p. 449, § 23; Rem.-Bal., § 6454.)

Conduct of election. See § 102.

140. Officer Not to Be Interested in Contract—Penalty.

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment. (L. '90, p. 692, § 40; Rem.-Bal., § 6455.)

Contracts for construction. See § 135.

141. Special Assessments—How Levied.

The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this chapter. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the

provisions of section 6430. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such election the ballots shall contain the words "Assessment, yes," and "Assessment, no." If a majority of the votes cast are "Assessment, yes," the board shall, at the time of the annual levy thereunder, levy an assessment to raise the amount voted. The rate of assessment shall be ascertained by adding fifteen per cent for anticipated delinquencies to the whole amount required, as it appears on the assessment roll. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board and collected at the same time and in the same manner as other assessments provided for herein, and when collected shall be paid into the county treasury of the county to the credit of said district, for the purposes specified in the notice of such special election. (L. '15, p. 627, § 19; Rem.-Bal., § 6456.)

Elections. See § 115.

Collection of assessments. See § 124.

See also § 149.

142. Excess Liability Void.

The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this chapter; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; except for the purpose of irrigation and in cases of emergency the board of directors may incur any indebtedness not exceeding in the aggregate a sum equal to fifteen per centum of the total amount fixed as rates, tolls, charges and assessments for the current year for the care, operation, management, repair and improvement of the irrigation works of the district pursuant to section 6452 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and may cause warrants of the district to issue therefor, bearing interest at a rate not to exceed eight per cent per annum. (L. '15, p. 628, § 20; Rem. Bal., § 6457.)

Operating funds. See § 137.

See § 184.

143. Distribution of Water.

In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. (L. '90, p. 693, § 43; Rem.-Bal., § 6458.)

See §§ 75 to 78.

144. Ditches to Be Open During High Water.

It shall be the duty of the board of directors to keep the water flowing through the ditches under their control to the full capacity of such ditches, in times of high water. (L. '90, p. 693, § 44; Rem.-Bal., § 6459.)

145. Navigation Shall Not Be Impaired.

Navigation shall never, in any wise, be impaired by the operation of this chapter, nor shall any vested interest in or to any mining water rights or ditches, or in or to any water or water rights, or reservoirs, or dams, now used by the owners or possessors thereof, in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used, directly or indirectly, in carrying on or promoting the mining industry, ever be affected by or taken under its provisions, save and except that rights-of-way may be acquired over the same. (L. '90, p. 693, § 45; Rem.-Bal., § 6460.)

See §§ 6, 9, 11-14, 31 and 36.

Dams. See § 247.

Conditions of construction. See § 258.

146. Diverting Water.

None of the provisions of this chapter shall be construed as repealing or in any wise modifying the provisions of any other act relating to the subject of irrigation. Nothing herein con-

tained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, canal, or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor under the laws of this state, authorizing the taking of private property for public uses. (L. '90, p. 694, § 46; Rem.-Bal., § 6461.)

See §§ 36, 37 and 48.

147. Boundaries May Be Changed—Effect Of.

The boundaries of any irrigation district now or hereafter organized under the provisions of this chapter may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made, except as hereinafter expressly in section 6475 of Remington & Ballinger's Annotated Codes and Statutes of Washington prescribed: *Provided*, That in case contract has been made between the district and the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the board of directors. (L. '15, p. 628, § 21; Rem.-Bal., § 6462.)

Formation of district. See §§ 100 and 101.

See §§ 148, 152 and 160.

Contract with United States. See § 112.

Exclusion of lands. See § 162.

148. Petition for Admitting Adjacent Lands.

The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous, and

which, taken together, constitute one tract of land, may file with the board of directors of said district a petition in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners respectively of distinct parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within said district, of the parcels or tracts of land described in the petition, and of which said petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged. (L. '90, p. 694, § 48; Rem.-Bal., § 6463.)

See §§ 147, 152 and 158.

Formation of districts. See § 100.

Hearing. See § 150.

Payments required. See § 151.

Objections. See § 153.

149. Notice of Petition—Costs.

The secretary of the board of directors shall cause a notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issue of bonds are required by this act to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the pub-

lication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter. (L. '90, p. 695, § 49; Rem.-Bal., § 6464.)

Special elections. . See § 141.

150. Hearing.

The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. (L. '90, p. 695, § 50; Rem.-Bal., § 6465.)

Petition. See § 148.

See §§ 151 and 152.

Objections. See § 153.

151. Payments Required on Lands Subsequently Incorporated.

The board of directors to whom such petition to include other lands in the district is presented, shall require, as a condition precedent to the granting of the petition, that the petitioners shall severally pay, or give approved security upon such terms as may be prescribed by the board to pay, to such district such respective sums as shall be determined by the board at the hearing above provided for, which sums shall be such equitable amount as such land shall pay having regard to placing said lands on the basis of equality with other lands in

the district as to benefits received, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. (L. '15, p. 629, § 22; Rem.-Bal., § 6466.)

Petition. See § 148.

Hearing. See § 150.

152. Orders Must Describe Boundaries.

The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petitions, or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district as they will be after the change thereof, as aforesaid, is made, and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary. (L. '90, p. 696, § 52; Rem.-Bal., § 6467.)

See §§ 147-151, 153 and 155.

Record of change. See § 156.

153. Objections.

If any person interested in said district, or the proposed change of its boundaries, shall show cause, as aforesaid, why such boundaries should not be changed and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be in-

cluded within the boundaries of the district when changed. (L. '90, p. 696, § 53; Rem.-Bal., § 6468.)

Hearing. See § 150.

Petition. See § 148.

See § 152, 155 and 158.

154. Election for Change of Boundaries.

Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and shall cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted, in the manner prescribed by this act in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced. (L. '90, p. 697, § 54; Rem.-Bal., § 6469.)

Special bond elections. See § 115.

See § 155.

155. Results—Action of Board.

If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in the matter. But if a majority of the votes be in favor of such a change of the boundaries of the district, the board shall thereupon order that the boundaries of the district be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may

cause a survey of such portion thereof to be made as the board may deem necessary. (L. '90, p. 697, § 55; Rem.-Bal., § 6470.)

Resolution of board. See § 153.

See §§ 152 and 154.

Record of change. See § 156.

156. Record of Change.

Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid had been included therein at the original organization of the district. (L. '90, p. 697, § 56; Rem.-Bal., § 6471.)

See §§ 152, 155 and 157.

157. Recording Petition.

Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence, with the same effect as the petition. (L. '90, p. 698, § 57; Rem.-Bal., § 6472.)

158. Fiduciaries to Appear.

A guardian, an executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor, or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward, or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed. (L. '90, p. 698, § 58; Rem.-Bal., § 6473.)

Petition. See § 148.

Objections. See § 153.

See also § 172.

159. Re-Division of District.

In case of the inclusion of any lands within any district by proceedings under this chapter, the board of directors must, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall thereafter be elected by each division. For the purposes of election, the board of directors must establish a convenient number of election precincts in said districts and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary. (L. '95, p. 450, § 26; Rem.-Bal., § 6474.)

Election. See §§ 101, 104 and 170.

160. Exclusion of Lands From District.

The boundaries of any irrigation district, now or hereafter organized under the provisions of this chapter, may be changed, and tracts of land which were included within the boundaries of such district, at or after its organization under the provisions of this chapter, may be excluded therefrom in the manner herein prescribed; but neither such change of the boundaries of the district, nor such exclusion of lands from the district, shall impair or affect its organization or its rights in or to property, or any of its rights and privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made, or had not any land been excluded from the district, unless the holders of such lien, obligation, charge or contract right chargeable against the district, consent to such exclusion in the manner hereinafter provided in section 6480 of Remington & Ballinger's Annotated Codes and Statutes of Washington for the consent of the bondholders. (L. '15, p. 629, § 23; Rem.-Bal., § 6475.)

See §§ 147, 161 and 162.

Consent of bond holders. See § 165.

161. Petition to Exclude.

The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district, may file with the board of directors a petition praying that such tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district, and also the lands of each of such petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as the acknowledgment of such conveyance. (L. '90, p. 699, § 61; Rem.-Bal., § 6476.)

Assessment of property. See § 118.

See §§ 160, 162, 165, 167 and 172.

Hearing. See § 163.

Action of board. See § 164.

Election for exclusion. See § 166.

162. Notice of Petition for Exclusion.

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the

district, to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. (L. '90, p. 699, § 62; Rem.-Bal., § 6477.)

Changing boundaries. See § 147.

See §§ 160, 161.

Hearing. See § 163.

163. Hearing.

The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof from said district; and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of said petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. (L. '90, p. 700, § 63; Rem.-Bal., § 6478.)

Notice of petition. See § 162.

Petition. See § 161.

Fiduciaries to appear. See § 172.

164. Action of Board on Petition for Exclusion.

The board of directors, if they deem it not for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if they deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district,

and if no person interested in the district shows cause, in writing, why the said lands, or some portion thereof, should not be excluded from the district, or if having shown cause withdraws the same, and also, if there be no outstanding bonds of the district, and no contract between the district and the United States, then the board may order that the lands mentioned in the petition, or some defined portion thereof, be excluded from the district. (L. '15, p. 630, § 24; Rem.-Bal., § 6479.)

Petition. See § 161.

Outstanding bonds. See § 165.

Contract with United States. See § 112.

Record. See § 168.

165. Outstanding Bonds.

If there be outstanding bonds of the district, or if the district shall have entered into a contract with the United States, then the board may adopt a resolution to the effect that the board deems it to the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can readily be traced. The holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district, and in case contract has been made with the United States the secretary of the interior may assent to such change. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect, as evidence, as the acknowledgment of such conveyance, except the assent of the secretary of the interior need not be acknowledged. The assent shall be filed with the board, and in the office of the county clerk in each county comprised within the district and must be recorded in the minutes of the board; and said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the said assent; but if such assent of the bondholders, and in case of contract with the United States

such assent of the secretary of the interior, be not filed, the board shall deny and dismiss said petition. (L. '15, p. 631, § 25; Rem.-Bal., § 6480.)

Exclusion of lands. See §§ 160 and 161.

Action of board re exclusion. See § 164.

Contract with United States. See § 112.

See §§ 166, 168 and 186.

166. Election for Exclusion.

If the assent aforesaid of the holders of said bonds be filed and entered of record as aforesaid, and if there be objections presented by any person showing cause as aforesaid, which have not been withdrawn, then the board may order an election to be held in said district to determine whether an order shall be made excluding said land from the district as mentioned in said resolution. The notice of such election shall describe the boundary of all lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election, in a newspaper published within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of such counties. Such notice shall require the electors to cast ballots, which shall contain the words "For exclusion," and "Against exclusion," or words equivalent thereto. Such election shall be conducted in the manner prescribed in this act for the holding of special elections on the issuance of bonds. (L. '15, p. 631, § 26; Rem.-Bal., § 6481.)

Assent of bondholders. See § 165.

Boundaries of land to be excluded. See § 161.

Bond election. See § 115.

See § 167.

167. Result.

If at any election a majority of all the votes cast shall be against the exclusion of said lands from the district, the board shall deny and dismiss said petition and proceed no further in said matter; but if a majority of such votes be in favor of the exclusion of said lands from the district, the board shall there-

upon order that the said lands mentioned in said resolution be excluded from the district. The said order shall describe the boundaries of the district, should the exclusion of the said lands from said district change the boundaries of the district; and for that purpose the board may cause a survey to be made of such portion of the boundaries as the board may deem necessary. (L. '90, p. 702, § 67; Rem.-Bal., § 6482.)

Petition to exclude. See § 161.

Election. See § 166.

Record. See § 168.

Director's office vacant. See § 169.

168. Record.

Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof, certified by the president and the secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any of the lands of the district, and thereupon said district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district. (L. '90, p. 702, § 68; Rem.-Bal., § 6483.)

Change of boundaries. See § 167.

See §§ 164 and 165.

169. Director's Office Vacant.

If the lands excluded from any district under this chapter shall embrace the greater portion of any division or divisions of such district, then the office of directors for such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board, under section 167 above, excluding said lands, and such vacancy or vacancies shall be filled by appointment by the board of county commissioners of the county where the office of such board is situated, from the district at large. A director appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified. (L. '90, p. 702, § 69; Rem.-Bal., § 6484.)

See § 167.

170. Districts, When Divided—Debts.

At least thirty days before the next general election of such district the board of directors thereof shall make an order dividing said district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall be elected by each division. For the purposes of elections in such district the board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time as the board of directors may deem necessary. [Whenever the board of directors of any district heretofore formed under this act shall have attempted to incur any indebtedness prior to this amendment going into effect, and when the only ground of the invalidity of such indebtedness is that the board of directors was not authorized to incur such indebtedness so contracted by said board, such indebtedness is hereby declared valid and binding upon said district, and the said directors are authorized to make an assessment of the property in said district as provided by this act as amended and to levy a tax upon said property as other levies are required to be made to pay such debts: *Provided*, Such indebtedness shall not exceed the sum of \$5,000, and all warrants drawn for such indebtedness by said directors shall be *prima facie* valid.] (L. '90, p. 702, § 70; Rem.-Bal., § 6485.)

That portion of this section in brackets is unconstitutional. *Percival v. Cowychee, etc., District*, 15 Wash. 480.

Redivision of district. See § 159.

See also §§ 101 and 104.

171. Map of Districts.

Said board of directors shall cause a map to be made of the irrigation districts showing each forty acres, subdivision or fraction thereof, and place the same on file in their office. (L. '95, p. 450, § 28; Rem.-Bal., § 6486.)

See § 111.

172. Fiduciaries to Appear.

A guardian, an executor or an administrator of an estate who is appointed as such under the laws of this state, and who,

as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this chapter mentioned, and may show cause, as in this chapter provided, why the boundaries of the district should not be changed. (L. '90, p. 703, § 71; Rem.-Bal., § 6487.)

See § 158 and notes.

Petition. See § 161.

Hearing and objections. See § 163.

173. Refunding Assessments.

In case of the exclusion of any lands under the provisions of this act, there shall be refunded to any and all persons who have paid any assessment or assessments to such district, on any land so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board of directors may designate. (L. '90, p. 703, § 72; Rem.-Bal., § 6488.)

Assessments. See § 118.

Disbursements. See § 136.

174. Approval of Bonds by Court.

The board of directors of an irrigation district, now or hereafter organized under the provisions of this chapter, may commence a special proceeding in and by which the proceedings of said board and of said district, providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not then been sold, may be judicially examined, approved and confirmed, or in case a contract shall have been made by any irrigation district for the payment of moneys to the United States and bonds be not deposited with the United States as in section 6427 of Remington & Ballinger's Annotated Codes and Statutes of Washington: *Provided*, The board may commence a special proceeding whereby the proceedings of said district providing for and authoriz-

ing the said contract, whether or not the same shall already have been executed, may be judicially examined, approved and confirmed. (L. '15, p. 632, § 27; Rem.-Bal., § 6489.)

Contract with United States. See § 112.

Issue of bonds. See § 115.

Sale of bonds. See § 116.

See § 175.

175. Petition to Superior Court.

The board of directors of the irrigation district shall file in the superior court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts, showing the proceedings had for the issue and sale of said bonds, or for the authorization of contract with the United States; and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district, or the election of said first board of directors. (L. '15, p. 633, § 28; Rem.-Bal., § 6490.)

See § 174 and notes.

Hearing of petition. See § 176.

Demurrer. See § 177.

Power of court. See § 178.

176. Notice of Hearing.

The court shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time that a notice of a special election provided for by this chapter to determine whether the bonds of said district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, or for the authorization of contract with the United States, may, on or before the day fixed

for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described as the petition of the board of directors of . . . irrigation district (giving its name), praying that the proceedings for the issue and sale of the bonds of said district for the authorization of contract with the United States be examined, approved, and confirmed by said court. (L. '15, p. 633, § 29; Rem.-Bal., § 6491.)

Petition to court. See § 175.

Notices of bond election. See § 115.

177. Demurrer.

Any person interested in said district, or in the issue or sale of said bonds or in the making of contract with the United States, may demur to or answer said petition. The statutes of this state respecting the demurrer, and the answer to a verified complaint, shall be applicable to a demurrer and answer to said petition. The person so demurring to or answering said petition shall be the defendant to said special proceeding, and the board of directors shall be the plaintiff. Every material statement to the petition not specifically controverted by the answer must, for the purpose of said special proceeding, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the statutes of this state, which are not inconsistent with the provisions of this chapter, are applicable to the special proceeding herein provided for. A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issue to be re-examined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial. (L. '15, p. 634, § 30; Rem.-Bal., § 6492.)

Petition. See § 175.

178. Power of Court—Costs.

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the

ing the validity of and approve and confirm each and all have been proceedings for the organization of said district under provisions of this chapter, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the sale thereof, and the sale thereof, and all proceedings which may affect the authorization or validity of the contract with the United States. The court, in inquiring into the regularity, legality, or correctness of said proceedings, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of said petition has been duly given and published for the time and in the manner in this chapter prescribed. The costs of the special proceedings may be allowed and apportioned between all parties, in the discretion of the court. (L. '15, p. 634, § 31; Rem.-Bal., § 6493.)

Petition to superior court. See § 175.

Appeal. See § 179.

179. Appeal.

An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within thirty days after the entry of said order or said judgment. (L. '15, p. 635, § 32; Rem.-Bal., § 6494.)

Power of court. See § 178.

180. Dissolution of Districts.

Any irrigation district, organized and existing by virtue of the laws of this state, which has no bonded indebtedness outstanding, may be disorganized and its business and affairs liquidated and wound up in the manner hereinafter provided. (L. '97, p. 207, § 1; Rem.-Bal., § 6495.)

See §§ 181 and 185.

181. Petition.

A petition signed by one-third or more holders of title or evidence of title to lands within said district who shall be qualified electors thereof, reciting the fact that said district has no bonded indebtedness and praying that said district be disorganized under the provisions of this chapter, shall be delivered to the secretary of the board of directors of said district or to one of the directors thereof. (L. '97, p. 207, § 2; Rem.-Bal., § 6496.)

See §§ 180, 183 and 185.
Election. See § 182.

182. Election.

Upon the delivery of said petition the board of directors of said irrigation district shall, at their next succeeding regular monthly meeting, order an election, the date of which election shall be within twenty days from the date of said meeting of the board of directors and which election shall be conducted as other elections of irrigation districts are conducted. At said election the qualified electors of said irrigation district shall cast ballots which shall contain the words "Disorganize, Yes," or "Disorganize, No." No person shall be entitled to vote at any election held under the provisions of this chapter unless he is a qualified voter under the election laws of the state, and holds title or evidence of title to land in said district. (L. '97, p. 207, § 3; Rem.-Bal., § 6497.)

Petition. See § 181.
Irrigation district elections. See § 101.
See §§ 183 and 185.

183. Three-fifths Vote.

If three-fifths of the votes cast at any election under the provisions of this act shall contain the words "Disorganize, Yes," then the board of directors shall present to the superior judge of the county in which said irrigation district is located an application for an order of said superior court that such irrigation district be declared disorganized and dissolved, and that its affairs be liquidated and wound up, as provided for in this act,

and reciting that at an election of such irrigation district, held as provided in this act, three-fifths of the votes cast contained the words "Disorganize, Yes," and such petition shall be certified to by the directors of said district. They shall also file with said superior court a statement, sworn to by the directors of said irrigation district, showing all outstanding indebtedness of said irrigation district, or if there be no such indebtedness, then the directors shall make oath to that effect. Notice of said application shall be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in a newspaper of the county printed and published nearest to said irrigation district, once each week for four weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed in the notice, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the provisions of this act have been complied with he shall enter an order declaring said irrigation district dissolved and disorganized. (L. '97, p. 208, § 4; Rem.-Bal., § 6498.)

Petition. See § 181.

Election. See § 182.

See § 185.

184. Directors Shall Be Trustees.

Upon the disorganization of any irrigation district under the provisions of this act, the board of directors at the time of the disorganization shall be trustees of the creditors and of the property holders of said district for the purpose of collecting and paying all indebtedness of said district, in which actual construction work has been done, and shall have the power to sue and be sued. It shall be the duty of said board of directors, and they shall have the power and authority, to levy and collect a tax sufficient to pay all such indebtedness, which tax shall be levied and collected in the manner prescribed by law for the levying and collection of taxes of irrigation districts. Any balance of moneys of said district remaining over after all out-

standing indebtedness and the cost of the proceedings under this act have been paid shall be divided and refunded to the assessment payers in said irrigation district, to each in proportion to the amount contributed by him to the total amount of assessments collected by said district. Said board of directors shall report to the court from time to time as the court may direct, and upon a showing to the court that all indebtedness has been paid, an order shall be entered discharging said board of directors. Upon the entry of such order said board of directors and all the officers of said district shall deliver over to the clerk of said court all books, papers, records and documents belonging to said district, or under their control as officers thereof: *Provided*, That nothing herein contained shall be construed to validate or authorize the payment of any indebtedness of said district exceeding the legal limitation of indebtedness specified by law for irrigation districts; or any indebtedness contracted by such irrigation district or its officers without lawful authority. (L. '97, p. 208, § 5; Rem.-Bal., § 6499.)

Assessment of property. See § 118.

Equalization. See § 121.

Collection. See § 124.

Excess liability. See § 142.

See § 190.

185. Dissolution of Districts in Debt.

Any irrigation district organized and existing under the laws of the State of Washington may be dissolved and its indebtedness liquidated in the manner in this chapter provided. (L. '99, p. 164, § 1; Rem.-Bal., § 6500.)

See §§ 180-184.

Petition. See § 187.

186. Bonds Outstanding.

If there are bonds of such district outstanding, the written consent of at least two-thirds in amount of the holders of all such bonds must be filed with the county auditor of the county in which such district is situated, consenting to such dissolution, which consent shall be acknowledged before some officer authorized by the laws of this state to take the acknowledg-

ment of deeds, and recorded in the records of deeds of said county. (L. '99, p. 164, § 2; Rem.-Bal., § 6501.)

See §§ 165, 185.

Duty of commissioners. See § 188.

Order of court, sale. See § 194.

Other indebtedness. See § 196.

187. Petition.

Whenever the consent of two-thirds in amount of such bondholders has been filed, as in this chapter provided, a petition signed by at least one-third of the freeholders in said district, who shall be qualified electors thereof, reciting the fact that said consent has been filed, and praying that said district be dissolved under the provisions of this chapter, shall be delivered to the county auditor of such county. (L. '99, p. 164, § 3; Rem.-Bal., § 6502.)

See § 185.

Duty of commissioners. See § 188.

188. Duty of County Commissioners.

Upon the filing of the written consent of the bondholders and the petition signed by the qualified electors, as provided in the last two sections, it shall be the duty of the board of county commissioners of such county at their next regular session, or at that time, if then in session, to call an election for the purpose of submitting to the voters of said district the question whether the district shall be dissolved under the provisions of this chapter. Such election shall be held upon like notice and conducted in like manner, as other elections under the irrigation district laws of this state, and the form of the ballot shall be "For dissolution—Yes," "For dissolution—No," and no person not a qualified elector under the general election laws of this state and a freeholder residing within said district shall be deemed a qualified elector under the provisions of this act. (L. '99, p. 164, § 4; Rem.-Bal., § 6503.)

See §§ 186, 187.

Election of irrigation district. See § 101.

189. Election.

Said board of county commissioners, at the time of calling such election, shall designate and appoint the proper officers to conduct the same, and shall direct the county auditor to sign and post notices of such election for the time and in the manner in said election district laws provided. (L. '99, p. 165, § 5; Rem.-Bal., § 6504.)

See § 188 and note.

190. Returns.

The officers conducting such election shall make returns thereof to the county auditor of the county in which such district is situated within ten days after such election, and the board of county commissioners of said county shall at the first meeting to be held thereafter canvass the vote of such election, and if a majority of the voters voting thereat shall vote in favor of dissolution it shall be the duty of all officers and persons having in their possession any of the books, records, documents, or proceedings appertaining to such district, to deliver the same, on demand, to the county auditor of the county in which such district is situated. (L. '99, p. 165, § 6; Rem.-Bal., § 6505.)

See §§ 184, 191.

191. Duty of County Auditor.

As soon as such books and other records and proceedings shall come into the possession of such county auditor it shall be his duty forthwith to certify under his hand and seal, and deliver to the county clerk of his county, a transcript of the proceedings before the board of county commissioners, and shall accompany the same with a statement of all indebtedness against said district so far as the same appears on the books and records of the same. (L. '99, p. 165, § 7; Rem.-Bal., § 6506.)

See §§ 190, 192.

192. Duty of County Clerk.

Upon the filing of such statement and certificate the clerk shall docket the proceedings entitled "In the matter of the dissolution of irrigation district," and the superior

court shall thereupon make an order directing the clerk to give notice that such statement has been filed in his office, which notice shall continue [contain] a general statement of the nature of the proceedings, and shall notify all persons having claims against said district to present the same for allowance and approval on or before a day in such notice to be specified. And all claims not presented and filed in said court on or before such date shall be forever barred. Such notice shall be published in some newspaper published in said county once a week for at least six weeks immediately preceding the date fixed for such hearing. (L. '99, p. 165, § 8; Rem.-Bal., § 6507.)

See §§ 191, 193.

193. Hearing.

At the time fixed for such hearing, or at any other time to which such hearing may be adjourned, if satisfied that the provisions of this chapter have been complied with, the court shall proceed to determine the validity of all claims and demands against said district, together with the amount thereof. No claim or debt which is barred by the statutes of limitations shall be approved or allowed. Such irrigation district, or any other person deeming himself aggrieved by the final judgment allowing or rejecting any claim, may appeal to the supreme court within ten days from the entry of such final judgment, but not thereafter. (L. '99, p. 166, § 9; Rem.-Bal., § 6508.)

Notice posted by clerk. See § 192.

Order of court, See §§ 194.

194. Order of Court.

If no appeal be taken from such judgment or if the judgment appealed from be affirmed, the court shall thereupon appoint a master who shall forthwith give notice that the property of the district, its rights and franchises, will be sold pursuant to an order of the court directing such sale: *Provided, however,* That such sale shall not include any property within said district which has been sold for taxes or other assessments in said district. A certified copy of such order shall be delivered to such master as his authority in the premises. Such notice of

sale shall be given in like manner and for the same time as a notice of sale of real property on execution, except that it shall not be deemed necessary to post any copy of such notice. Said sale shall be made at public auction at the front door of the court house in such county, and may be adjourned from time to time, not exceeding three weeks in all, by public proclamation made at the time and place of sale, or the time from which the same may have been previously adjourned. Such master is authorized to receive in payment of the purchase price any securities or obligations of such district, the validity of which has been established by the previous judgment of the court, as herein provided; such securities or obligations to be accepted at their face value and no bids shall be accepted, and no sale of said property shall be made for a less sum than the amount of bonded indebtedness of such district, including all accrued interest. (L. '99, p. 166, § 10; Rem.-Bal., § 6509.)

Sale for taxes. See § 126.

Appeal. See § 193.

Return of master. See § 195.

Validity of claims. See § 193.

Bonded indebtedness. See § 186.

195. Return of Master—Deed.

Said master shall thereupon make return of his proceedings and file the same with the clerk of the court, and if the court is satisfied that such sale was fairly conducted, it shall make an order confirming and approving the same, and upon such confirmation such master shall execute and forthwith deliver to the purchaser or purchasers at said sale a good and sufficient deed of conveyance, and such deed, when so executed, shall be operative, and shall convey to the purchaser at said sale the property rights, franchises and privileges of such district, as hereinbefore described, clear and free from any claim or lien in favor of such district or its creditors, and shall entitle the purchaser to the immediate possession of the property so purchased. (L. '99, p. 167, § 11; Rem.-Bal., § 6510.)

Master appointed. See § 194.

Tax for indebtedness. See § 196.

Order of dissolution. See § 197.

196. Indebtedness—Levy of Tax.

As soon as such sale is made and confirmed, it shall become the duty of the board of county commissioners of the county in which the district is situated, to levy an assessment for the purpose of liquidating all outstanding indebtedness of such district, exclusive of the bonded indebtedness herein provided, on all the property within the district, subject to assessment under the general irrigation district laws of the state, which indebtedness shall be ascertained by reference to the judgment of the court as herein provided. In levying such assessments the board of county commissioners shall be governed as near as may be by the general irrigation district laws, except as herein otherwise provided. The county assessor shall, under the direction of the board of county commissioners, prepare an assessment roll of the lands in said district from the last assessment roll of the county, for state and county taxes. The board of county commissioners shall equalize the same, after giving like notice and in like manner as the board of directors of irrigation districts are required to do. The county auditor shall perform the same duties as are now devolved by law on the secretary of irrigation districts, and the county treasurer shall be *ex-officio* treasurer and collector thereof. In all other respects such tax shall be collected as under the general irrigation district laws of the state. (L. '99, p. 167, § 12; Rem.-Bal., § 6511.)

Sale. See § 195.

Bonded indebtedness. See § 186.

Assessment. § 118.

Equalization. See §§ 120 and 121.

Collection. See § 124.

Order of dissolution. See § 197.

197. Order of Dissolution.

As soon as the sale is confirmed as herein provided, the court shall make an order dissolving the irrigation district, a certified copy of which shall be recorded in the office of the county auditor of the county in which such district is situated; and from and after the filing of such order said district shall cease to exist, except for the purpose of the collection of its indebtedness; and all papers, records and proceedings appertaining to

the same shall be turned over to the county auditor of the proper county, and all bonds and other obligations of the district shall be cancelled as soon as paid. (L. '99, p. 168, § 18; Rem.-Bal., § 6512.)

Confirmation of sale. See § 195.

Indebtedness and collection of. See § 196.

CHAPTER X.

STATE LANDS.

198 Irrigation of State Lands.

The commissioner of public lands of the State of Washington, be and is hereby authorized and empowered to receive and file proposals, and to enter into contract as herein provided, for the construction of irrigation works to reclaim any and all of the lands granted to the State of Washington for any and all purposes and uses. (L. '05, p. 113, § 1; Rem.-Bal., § 6729.)

Lands may be acquired under the "Carey Act." See note to § 213.

Sale of irrigable lands. See § 206.

Exemptions. See § 240.

199 Proposals to Be Made—Rules.

Any person, company or association of persons or incorporated company doing business in the State of Washington desiring to construct ditches, canals or other irrigation works for the reclamation of said lands, shall file with the commissioner of public lands, proposal to construct the ditches, canals or other irrigation works necessary to the complete reclamation of said lands. The proposal shall be prepared in accordance with the rules adopted by the commissioner of public lands. It shall state the source of water supply, the location and dimension of the proposed works, the location and character of the land proposed to be irrigated, the price per acre at which perpetual water right will be sold to settlers on the land to be irrigated, and shall be accompanied by maps, plans and specifications of the proposed works and lands to be irrigated, which shall be considered a part of the proposal. In the case of in-

corporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking. (L. '05, p. 113, § 2; Rem.-Bal., § 6730.)

This chapter covers the same subject-matter as chapter XI, and therefore probably supersedes said chapter XI, *q. v.*

May overflow state lands. See §§ 38-44.

See § 200.

Commissioner to pass on proposals. See § 201.

Acceptance of. See § 202.

Rules by commissioner. See § 209.

200. Certified Check With Proposal—Forfeiture.

A certified check for a sum not less than two hundred and fifty dollars (\$250.00) nor more than two thousand five hundred dollars (\$2,500.00), as may be determined by the commissioner of public lands, shall accompany each such proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms by the party submitting such proposal. In case of the approval of the same and the acceptance of the proposal by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this chapter. (L. '05, p. 114, § 3; Rem.-Bal., § 6731.)

Proposals. See § 199.

Terms of contract. See § 202.

201. Commissioner Shall Pass on Proposals—Amendment of Proposals.

Immediately upon the receipt of any proposal as designated in section 202, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies in form with the rules adopted by him as provided in section 202. If it does not it is to be returned for correction, and if not corrected within sixty days, it may be rejected by the com-

missioner of public lands. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water provided is adequate, and whether the proposed irrigation works described in the maps, plans and specifications, are adequate for the irrigation of the lands intended to be irrigated. When a request or proposal is not approved by the commissioner of public lands, he shall notify the party making such request or proposal of his disapproval thereof, and the party so notified shall have sixty days in which to make a satisfactory proposal, but the commissioner of public lands may, at his discretion, extend the time six months. (L. '05, p. 114, § 4; Rem.-Bal., § 6732.)

Proposals to be made. See § 199.

202. Acceptance of Proposals—Terms of Contracts—Governor Shall Approve Contracts.

If the plans and specifications for the proposed irrigation works and the furnishing of a perpetual water supply for the irrigation of said lands is approved by the commissioner of public lands, the said commissioner of public lands is authorized and empowered to enter into a contract with the party submitting the proposal, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal or other irrigation work; the price per acre at which perpetual water rights shall be sold to the settler or owner, which price may be paid in a lump sum or in ten annual payments, as the settler or owner may elect; the amount of water to be supplied and the price of the annual maintenance fee per acre: *Provided*, That no contract under the provisions of this chapter shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor. (L. '05, p. 114, § 5; Rem.-Bal., § 6733.)

Forfeiture of guarantee. See § 200.

Commissioner to pass on proposals. See § 201.

Proposals. See § 199.

See § 203.

Water rights. See § 207.

203. When Work Shall Be Completed—Extension of Time—Bond of Contractor.

No contract shall be made by the commissioner of public lands which requires greater time than three years for the construction of the works and such additional time as may be granted by the commissioner of public lands not to exceed two years, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within twelve months from the date of said contract, and the construction of said works shall be prosecuted with reasonable diligence to completion. The commissioner of public lands shall, before letting any contract for the construction of any works herein provided for, require the contractor to enter into a bond to the State of Washington in the penal sum of not less than twenty per cent. of the estimated cost of the works, conditioned for the faithful performance of the terms and conditions of said contract. (L. '05, p. 115, § 6; Rem.-Bal., § 6734.)

Acceptance of proposals. See § 202.
See next section.

204. Default in Performance of Contract—Forfeiture—Receivership—Sale.

Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time specified by the contract, or to complete the same within the time or in accordance with the specification of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice, such party shall have failed to proceed with the work or to conform with the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some

newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, that upon a day fixed, proposals will be received at the office of commissioner of public lands for the purchase of the incompletd works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section, shall first be applied to the expenses incurred by the state in their forfeiture and disposal and to satisfy the bonds, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party and manage, operate, sell or dispose of same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by the law relating to receivers: *Provided*, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law. (L. '05, p. 115, § 7; Rem.-Bal., § 6735.)

Time limit, bond. See § 203.

See § 205.

Actions by commissioner. See § 211.

205. State Shall Not Be Liable.

Nothing in this chapter shall be construed as authorizing the commissioner of public lands to obligate the state to pay for

any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. (L. '05, p. 116, § 8; Rem.-Bal., § 6736.)

See § 204.

206. Sale of Irrigable Lands—Water Contract.

Whenever application has been made to the commissioner of public lands for the purchase of any of the irrigable lands described in this chapter as provided by law, the said application shall be accompanied by the sworn statement of the applicant that he is ready and willing to enter into contract with the person, company, or association of persons, or incorporated company, who have been authorized by the commissioner of public lands to furnish water for the reclamation of said lands, which statement shall be filed with said application, and the commissioner of public lands may thereupon proceed to the appraisement, advertisement and sale of said lands as provided by law. In case of the sale of any lands to any party pursuant to the appraisement and advertisement thereof, the commissioner of public lands shall not issue a contract therefor until there shall have been filed in his office a certified copy of a contract for a perpetual water right for said lands made and entered into by the party purchasing the same with the person, company, or association of persons, or incorporated company, who have been authorized by the commissioner of public lands to furnish water for the reclamation of said lands. (L. '05, p. 116, § 9; Rem.-Bal., § 6737.)

Irrigation of state lands. See § 198.

Water rights. See § 207.

Restrictions on sale. See § 243.

207. Water Rights Appurtenant to Land—Lien for Charges—Recording—Foreclosure—Sale and Redemption—Conveyance.

The water right to all land acquired under the provisions of this chapter shall attach to and become appurtenant to the land. Any person, company, or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon

which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this chapter, or maintenance fee, the person, company or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler or owner the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right are situated, once a week, for four consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and deliver a certificate of sale to the purchaser, and at such sale no person, company or association of persons or incorporated company, owning or holding any lien shall bid in or purchase any land or water rights at a greater price than the amount due on deferred payment or payments for said water right and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner, against whom the lien has been foreclosed, or any party entitled to redeem the land sold under execution may redeem the

land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party redeeming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments made subsequent to such foreclosure as well as all maintenance fees due at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lien holder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lien holder at such foreclosure sale the sheriff shall pay out of the proceeds of such sale as follows:

First, He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second, To the lien holder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third, The balance, if any remaining, to the person against whom such lien was foreclosed or his assigns.

When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and

with like effect as foreclosure of chattel mortgages on notice may be transferred. (L. '05, p. 117, § 10; Rem.-Bal., § 6738.)

Sale of irrigable lands. See § 208.

Acceptance of proposals. See § 202.

Map of ditches. See § 46.

Adjudication of priorities. See § 61.

208. What Maps Shall Show—Right-of-Way Over State Lands.

The maps in the office of the commissioner of public lands of the lands proposed to be irrigated under the provisions of this chapter shall show the location of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all land described therein belonging to the State of Washington shall be subject to the right-of-way of such canals, distribution system and irrigation works, such right-of-way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance. (L. '05, p. 119, § 11; Rem.-Bal., § 6739.)

See § 41.

Map filed. See § 42.

209. Rules by Commissioner—Reports to Commissioner.

The commissioner of public lands shall provide suitable rules for the filing of proposals for the construction of irrigation works. There shall be kept in the office of the commissioner of public lands, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the purchase of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of irrigation works under the provisions of this chapter, an annual report, to be submitted to him on or before November 1st, of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and

such other data as the commissioner of public lands may see fit to require. (L. '05, p. 119, § 12; Rem.-Bal., § 6740.)

Proposals to be made. See § 199.

Report to governor. See § 210.

210. Biennial Report of Land Commissioner.

The commissioner of public lands shall include in his biennial report to the governor a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivisions of land intended to be reclaimed and the terms of payment for water right sold. (L. '05, p. 119, § 13; Rem.-Bal., § 6741.)

Data received by commissioner. See § 209.

211. Actions by Commissioner in Name of State.

All suits or actions brought by the commissioner of public lands under the provisions of this chapter, shall be instituted by him in the name of the State of Washington. (L. '05, p. 119, § 14; Rem.-Bal., § 6742.)

Forfeiture of contract. See § 204.

212. Not to Affect Preceding Chapter.

Nothing in this chapter shall be construed as a repeal, amendment or modification in any respect of chapter ten of this title. (L. '05, p. 119, § 15; Rem.-Bal., § 6743.)

"Chapter ten" here refers to "Reclamation of Arid Lands under the Carey Act," (chapter XI of this compilation).

CHAPTER XI.

ACCEPTANCE AND RECLAMATION UNDER CAREY ACT.

213. Acceptance of Arid Land Grant.

The State of Washington hereby accepts the condition of section four (4) of an act of congress, entitled: "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18th, A. D. 1894, and all acts subsequent and relating thereto together with all the grants of

land to the state under the provisions of the aforesaid acts. (L. '03, p. 229, § 1; Rem.-Bal., § 6706.)

The act known as the "Carey Act" was accepted by the state in an act passed in 1895, as follows: The State of Washington does hereby accept the terms of the act of congress approved August eighteenth, eighteen hundred and ninety-four, donating to each of the public land states one million acres of arid land. (L. '95, p. 452, § 1; Rem.-Bal., § 6705.)

See note to § 199.

Duty of commissioner. See § 217.

Exemptions. § 240.

214. Commissioner—Power Vested.

The selection, management and disposal of said lands shall be vested in the commissioner of public lands of the State of Washington. He shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this chapter, prepare and keep for public inspection, maps or plats, on a scale of two inches to the mile, of all lands selected, receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required to be done in carrying out the provisions of this act. (L. '03, p. 299, § 2; Rem.-Bal., § 6707.)

See note to § 199.

Proposal. See § 215.

Duty of commissioner. See § 217.

Maps. See § 229.

Rules for filing proposals. See § 230.

215. Filing Request and Proposal.

Any person, company or association of persons, or incorporated company, constructing, having constructed or desiring to construct ditches, canals, or other navigation [irrigation] works, to reclaim land under the provisions of said act, shall file with the commissioner of public lands a request for the selection on behalf of the state by the commissioner of public lands of the land to be reclaimed, designating said land by legal subdivision. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the lands to be selected. The proposal shall be prepared in accordance with the rules of the commissioner of public lands and with the regulation of the department of the interior. It shall state the source of water supply,

the location and dimensions of the proposed works, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its trustees and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the commissioner of public lands to determine his or their financial ability to carry out the proposed undertaking. (L. '03, p. 299, § 3; Rem.-Bal., § 6708.)

See note to § 199.

Power of commissioner. § 214.

Guarantee. See § 216.

Duty of commissioner. See § 217.

Triplicate lists. See § 218.

Purchasers of state lands. See § 224.

Rules for filing. See § 230.

216. Certified Check.

A certified check for a sum not less than two hundred and fifty dollars (\$250) nor more than two thousand five hundred dollars (\$2,500) as may be determined by the rules of the commissioner of public lands shall accompany each such request and proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the commissioner of public lands, and to be forfeited to the state in case of the failure of said party to enter into a contract with the state in accordance with the provisions of this chapter. (L. '03, p. 300, § 4; Rem.-Bal., § 6709.)

See note to § 199.

Proposal. See § 215.

217. Duty of Commissioner.

Immediately upon the receipt of any request and proposal as designated in section 215, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it

complies in form with the rules of his office and the regulations of the department of the interior. If it does not it is to be returned for correction, and, if not corrected within sixty days, it may be rejected by the commissioners. The commissioner of public lands shall determine whether or not the proposed works are feasible and the water appropriated and provided for is adequate and whether the maps filed in his office comply with the requirements of his office and the regulations of the department of the interior; also whether the lands proposed to be irrigated are desert in character, and such as may be properly set apart under the provisions of the aforesaid acts of congress and the rules and regulations of the department of the interior thereunder. When a request or proposal as to substance is not approved by the commissioner he shall notify the party making such request or proposal of his disapproval thereof and the reason therefor, and the party so notified shall have sixty days in which to make a satisfactory proposal but the commissioner may, at his discretion, extend the time to six months. (L. '03, p. 300, § 5; Rem.-Bal., § 6710.)

See note to § 199.

Maps. See § 214.

Act of congress. See § 213 and note.

218. Triplicate Lists Filed.

On receipt of the request and proposal, and the approval of the same by the commissioner of public lands, he shall file in the local United States land office a list in triplicate, describing the land embraced in said proposal with a request for the withdrawal of the land described in said list. (L. '03, p. 301, § 6; Rem.-Bal., § 6711.)

See note to § 199.

Request and proposal. See § 215.

Withdrawal of land. See § 219.

219. Withdrawal of Lands—Approval of Contract.

Upon the withdrawal of the land by the department of the interior, it shall be the duty of the commissioner of public lands to enter into a contract with the party submitting the pro-

posals, which contract shall contain complete specifications of the location, dimensions and character of the proposed ditch, canal and other irrigation works; the price and terms per acre at which perpetual water rights shall be sold to the settler; the amount of water to be supplied; the price of an annual maintenance fee per acre, and the price and terms upon which the state is to dispose of the land to settlers: *Provided*, That such price and terms for irrigation works, water rights, maintenance fee and for lands to be disposed of by the state to settlers, shall in all cases be reasonable and just. This contract shall not be entered into on the part of the state until withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bonds shall be in penal sum equal to five per cent. of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the state: *Provided*, That no contract under the provisions of this chapter shall be entered into by the commissioner of public lands until the same shall have been approved by the attorney general and the governor. (L. '03, p. 301, § 7; Rem.-Bal., § 6712.)

See note to § 199.

Lists filed. See § 218.

Limit of contract time. See § 220.

Forfeiture. See § 221.

Liability of state. See § 222.

Land open. See § 223.

Purchasers. See § 224.

Settler's contract. See § 226.

Maps. See § 229.

220. Limit of Contract Time.

No contract shall be made by the commissioner of public lands which requires a greater time than ten (10) years for the construction of the works and such additional time as may be granted by the interior department as provided by the aforesaid acts of congress and amendments thereto, and all contracts shall state that the work shall begin within six months from the date of the contract; at least one-tenth of the construction work shall be completed within two years from the

date of said contract; and the construction of said works shall be prosecuted with reasonable diligence to completion. (L. '03, p. 302, § 8; Rem.-Bal., § 6713.)

See note to § 199.

Contract. See § 219.

Forfeiture. See § 221.

221. Failure to Begin Work—Forfeiture.

Upon the failure of any party having a contract with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such party written notice of such failure and if, after a period of sixty days from the giving of such notice such party shall have failed to proceed with the work or to conform to the specifications of his contract with the state the bond and contract of such party and all work constructed under such contract shall be at once and thereby forfeited to the state, and it shall be the duty of the commissioner of public lands at once so to declare and to give notice once each week for a period of four weeks in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, that upon a day fixed, proposals will be received at the office of the commissioner of public lands at Olympia, Washington, for the purchase of the incompleted works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works, under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, to satisfy the bond, and the surplus, if any exists, shall be paid to the original contractor with the state. Whenever after the completion of said irrigation works any contractor or his successors or assigns shall fail to furnish an adequate amount of water to irrigate the lands of water right owners or there shall exist other cause

as provided by law for the appointment of a receiver, the attorney general may apply for the appointment of a receiver to take possession of the irrigation works and canal and other property of such party, and manage, operate, sell or dispose of the same. Such application shall be made to the superior court of the county in which the whole or some portion of the irrigation works or canal of such party is situated; and the court or its receiver by order of the court shall have and may exercise such powers as to the possession, management, operation, sale or disposition of the property and works of such party as is provided by law relating to receivers: *Provided*, That nothing herein contained shall be taken or construed as limiting the right of any party to have a receiver appointed as is in other cases provided by law. (L. '03, p. 302, § 9; Rem.-Bal., § 6714.)

See note to § 199.

Time limit of contract. See § 220.

Contract. See § 219.

Liability of state. See § 222.

222. State Not Liable.

Nothing in this chapter shall be construed as authorizing the commissioner of public lands to obligate the state to pay for any work constructed under any contract or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. (L. '03, p. 303, § 10; Rem.-Bal., § 6715.)

Contract. See § 219.

Failure of contractors. See § 221.

223. Land Open—Published.

Immediately upon the withdrawal of any land for the state by the department of the interior and the inauguration of work by the contractor, it shall be the duty of the commissioner of public lands, by publication once a week in one newspaper of the county or counties in which said land is situated, and such further notice as he may deem necessary, for a period of four weeks, that said land is open for settlement; the price for which said land will be sold to settlers by the state, the contract price

at which settlers can purchase a perpetual water right, and the cost of an annual maintenance fee. (L. '03, p. 303, § 11; Rem.-Bal., § 6716.)

See note to § 199.

Withdrawal of lands. See § 219.

Water rights. See § 228.

224. Who May Purchase.

Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women not the heads of families) over the age of twenty-one years, may make application under oath, to the commissioner of public lands, to enter any of said lands in any amount not to exceed one hundred and sixty acres for any one person; such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and the applicant has never received the benefit of the provisions of this act, to an amount greater than one hundred sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association of persons, or incorporated company who have been authorized by the commissioner of public lands to furnish water for the reclamation of said land; and if said applicant has at any previous time entered land under the provisions of this chapter, he shall so state in his application, together with the description, date of entry and location of said lands. The commissioner of public lands shall thereupon file in his office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of one dollar per acre, which shall be paid as a partial payment on the land if the application is allowed, and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, or the contractor fails to complete

the work according to contract the one dollar per acre accompanying the application shall be returned to the applicant. The commissioner of public lands shall dispose of all lands accepted by the state under the provisions of this act at a uniform price of not less than ten dollars per acre, one-tenth to be paid at the time of entry and the remainder in nine equal annual installments, with interest at six per cent. per annum payable annually, provided a settler may make payment in full at any time upon or after making final proof. (L. '03, p. 303, § 12; Rem.-Bal., § 6717.)

See note to § 199.

Proposal. See § 215.

Contract. See § 219.

Deposit of funds. See § 225.

Settler's contract. See § 226.

Patent. See § 227.

Fees. See § 231.

Restrictions on sale of state lands. See § 243.

225. Deposit of Funds.

All moneys received by the commissioner of public lands from the sale of lands selected under the provisions of this chapter shall be deposited with the state treasurer and shall constitute a trust fund in the hands of said treasurer to be used in the reclamation of other arid lands. (L. '03, p. 304, § 13; Rem.-Bal., § 6718.)

See note to § 199.

Purchasers of state lands. See § 224.

Settler's contract. See § 226.

226. Settler's Contracts, Etc.

Within one year after any person, company or association of persons or incorporated company authorized to construct irrigation works under the provisions of this chapter, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, each settler shall enter into a contract with the state for the purchase of the land described in his certificate of location, complete the first annual payment thereon, and shall cultivate and reclaim not less than one-sixteenth part of the land filed upon by him, and within two years after the said notice, the settler

shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within ten years from the date of said notice the settler shall appear before the commissioner of public lands or the clerk of the superior court, within the county wherein said land is situated and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon and has cultivated and irrigated not less than one-eighth of said tract, and such further proof, if any, as may be required by the regulations of the department of the interior, and the commissioner of public lands. The officer taking this proof shall be entitled to receive a fee of two dollars (\$2.00), which fee shall be paid by the settler and shall be in addition to the price paid for the land. All proofs so received shall be submitted to the commissioner of public lands and shall be accompanied by the last and final payment for said land, and approved by the commissioner of public lands, and such proceedings had that a patent of said land shall be issued: *Provided*, That when the commissioner of public lands shall take such final proof all fees received by him shall be turned into the state treasurer. (L. '03, p. 305, § 14; Rem.-Bal., § 6719.)

See note to § 199.

Contract. See § 219.

Purchasers. See § 224.

Deposit of funds. See § 225.

Fees. See § 231.

227. Patents.

After the issuance of a patent to any land by the United States to the state, notice thereof shall be forwarded to the party, if any entitled to said land, and, upon full payment having been made, it shall be the duty of the commissioner of public lands to certify such fact to the governor, whereupon he shall cause a patent to be issued to the purchaser, the patent to be signed by the governor and attested by the secretary of state with the seal of the state thereto attached, and shall be recorded

in the office of the commissioner of public lands, and no fee shall be required other than the fee provided for in this chapter. (L. '03, p. 305, § 15; Rem.-Bal., § 6720.)

See note to § 199.

Purchasers. See § 224.

Fees. See § 231.

228. Water Rights Attached.

The water right to all land acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company or association of persons, or incorporated company furnishing water for any tract of land shall have a prior lien on said water right and land upon which said water is used for all deferred payments for said water right and for any maintenance fee due, said lien to be in all respects prior to any other lien or liens created or attempted to be created by the owner or possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired and until all delinquent maintenance fees are fully paid. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county auditor of the county where the land is situated. Upon default of any of the deferred payments secured by any lien under the provisions of this act and any maintenance fee, the person, company, or association of persons, or incorporated company holding or owning said lien, may foreclose the same according to the conditions and terms of the contract granting and selling to the settler the water right and providing for a maintenance fee. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situated, once a week, for four consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the contract. And the sheriff of said county shall in all such cases give notice of sale and shall sell such land and water right and shall make and

deliver a certificate of sale to the purchaser, and at such sale no person, company, or association of persons, or incorporated company, owning or holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment or payments for said water right and land and maintenance fee due and the costs incurred in making the sale of the land and water right. At any time within nine months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, or any other party entitled to redeem land sold under execution may redeem land and water right so sold in the same manner and order and under the same procedure as is or may be provided by law for the redemption of land sold under execution. The party reclaiming said land and water right shall pay to the sheriff the amount for which said land and water right was sold and costs and increased costs, together with interest thereon at the legal rate, and all taxes and payments maturing subsequent to such foreclosure as well as all maintenance fees due at the time of redemption with interest at like rate. If there be more than one redemption each successive redemption shall be made within six (6) weeks after the last preceding redemption. And where the lien holder becomes the purchaser at such foreclosure sale, and in no other case, if such land and water right be not redeemed by the original owner or other person entitled to redeem as above provided within nine (9) months then at any time within three (3) months after the expiration of such nine (9) months any person desiring to settle upon and use such land and water right may redeem the said land and water right in the manner hereinbefore provided for redemption by the owner or other redemptioners. Where such land and water right are not purchased by the lien holder at such foreclosure sale the sheriff shall pay out the proceeds of such sale as follows:

First, He shall retain all charges, costs and fees for his services and account for the same as in civil cases.

Second, To the lien holder or his assigns the amount of the lien together with all interest, costs and fixed charges thereon.

Third. The balance of any remaining, to the person against whom such lien was foreclosed or his assigns. When the period of redemption shall have expired the sheriff or his successor in office shall execute a proper conveyance of the land and water right sold, to the party entitled thereto. The foreclosure herein provided for may be transferred to the superior court of the proper county in the same manner and with like effect as foreclosure of chattel mortgages on notice may be transferred. (L. '03, p. 306, § 16; Rem.-Bal., § 6721.)

See note to § 199.

Publish purchase price of rights. See § 223.

Withdrawal of land. See § 219.

Patents. See § 227.

Adjudication of priorities. See § 61.

229. Maps—What to Show.

The maps in the office of the commissioner of public lands, of the land selected under the provisions of this chapter, shall show the location of the canals or other irrigation works approved in the contract with the commissioner of public lands, and all land filed upon shall be subject to the right-of-way of such canals, distribution system and irrigation works. Such right-of-way to embrace the entire width of the canal, distribution and irrigation works and such additional width as may be required for their proper operation and maintenance. (L. '03, p. 308, § 17; Rem.-Bal., § 6722.)

See note to § 199.

See § 214.

Contract. See § 219.

230. Rules for Filing Proposals.

The commissioner of public lands shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the forfeiture of entry by settlers, upon failure to comply with the provisions of this chapter. There shall be kept in the office of the commissioner of public lands for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of the land by settlers. He shall require from each person, company or association of persons, or incorporated company engaged in the construction of

irrigation works under the provisions of this chapter, an annual report, to be submitted to him on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works are prepared to supply with water, and such other data as the commissioner of public lands may see fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by any person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves. (L. '03, p. 308, § 18; Rem.-Bal., § 6723.)

See note to § 199.

Powers of commissioners. See § 214.

Filing request and proposal. See § 215.

Commissioner's report. See § 232.

231. Fees of Commissioner.

The commissioner of public lands shall collect the following fees: For filing each application one (1) dollar; for filing each final proof one (1) dollar; for issuing each patent two (2) dollars; for making certified copies of papers or records, the same fee as is provided for to be charged by the secretary of state for like services. All moneys collected and fees received under this chapter shall be paid by the commissioner of public lands to the state treasurer and credited by him to the trust fund created by said act of congress. (L. '03, p. 308, § 19; Rem.-Bal., § 6724.)

See note to § 199.

Application. See § 224.

Final proof. See § 226.

Patents. See § 227.

232. Commissioner's Report.

The commissioner of public lands shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivision of land intended to be reclaimed, and the terms of payment for both water

rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution. (L. '03, p. 309, § 20; Rem.-Bal., § 6725.)

Data received. See § 230.

233. Contract for Reclamation.

Any contract for the reclamation of arid lands under this chapter shall provide that a water right be extended to all state, school and granted lands owned by the State of Washington, under the canal and irrigation works to be constructed under such contract at the same rates and upon the same terms and conditions as apply to the lands granted under said act of congress. (L. '03, p. 309, § 21; Rem.-Bal., § 6726.)

Act of congress referred to. See note to § 213.

234. Reimburse State.

The State of Washington shall, out of the moneys arising from its disposal of any lands selected under this chapter, first reimburse itself for any and all costs and expenditures incurred, and heretofore incurred, by it in selecting, irrigating and reclaiming said land. (L. '03, p. 309, § 22; Rem.-Bal., § 6727.)

235. Commissioner Institute Suits.

All suits or actions brought by the commissioner of public lands, under the provisions of this chapter, shall be instituted by him in the name of the State of Washington. (L. '03, p. 309, § 23; Rem.-Bal., § 6728.)

CHAPTER XII.

GRANTS TO THE FEDERAL GOVERNMENT.

236. Federal Government, Authority Given to.

The federal government is hereby authorized to avail itself of all the provisions of this act.* (L. '90, p. 728, § 66; Rem.-Bal., § 6391.)

* The act referred to includes sections 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 31, 32, 36, 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 72, 73, 74, 75, 76, 77, 78, 79, 90, 91, 92, 93, 94, 95, 96, 97, 98, 236, 258, 259, 277 and 278.

237. (Transposed and made § 246.)

238. Eminent Domain by United States.

The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the State of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court. (L. '05, p. 180, § 1; Rem.-Bal., § 6408.)

Petition to condemn water rights. See §§ 48 and 49.
See §§ 239 and 246.

239. Right of United States to Use Water Course.

The United States shall have the right to turn into any natural or artificial water course, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said water course for irrigation purposes subject to existing rights. (L. '05, p. 180, § 2; Rem.-Bal., § 6409.)

See § 238.

240. Exemptions Pending Federal Investigation.

Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commissioner of public lands of this state that pursuant to the provisions of the act of congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid

lands," or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any of such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or to extend into two or more counties, then for the same period in a newspaper in each of such counties: *Provided*, That in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor, the waters specified in such notice shall, after

the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: *And provided further*, That in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters within said three years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never been filed. (L. '05, p. 180, § 3; Rem.-Bal., § 6410.)

Acceptance of arid land grants. See § 213.

Irrigation of state lands. See § 198.

See § 241.

Reservation; procedure. See § 242.

Restricting sale of state lands. See § 243.

241. Appropriation—Titles to Beds and Shores.

Whenever said secretary of the interior or other duly authorized officer of the United States shall cause to be let a contract for the construction of any irrigation works, or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in the preceding section, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, except as to the time for the initiation, prosecution and completion of the necessary works for the utilization of the waters so appropriated, which time shall be controlled by the provisions of section 240 above. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said ap-

appropriation had been made by a private person, corporation or association. The title to the beds or shores of any navigable lake or stream utilized by the construction of any reservoir or other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works. (L. '05, p. 182, § 4; Rem.-Bal., § 6411.)

Exemptions. See § 240.

Appropriation. See §§ 4, 9, 10 and 14.

242. Reservation of Necessary Lands by United States—Procedure.

When the notice provided for in section 240 above shall be given to the commissioner of public lands the proper officers of the United States may file with the said commissioner a list of lands (including in the terms "lands" as here used, the beds and shores of any lake, river, stream, or other waters) owned by the state, over or upon which the United States may require rights-of-way for canals, ditches or laterals or sites for reservoirs and structures therefor or appurtenant thereto, or such additional rights-of-way and quantity of land as may be required for the operation and maintenance of the completed works for the irrigation project contemplated in such notice, and the filing of such list shall constitute a reservation from the sale or other disposal by the state of such lands so described, which reservation shall, upon the completion of such works and upon the United States by its proper officers filing with the commissioner of public lands of the state a description of such lands by metes and bounds or other definite description, ripen into a grant from the state to the United States. The state, in the disposal of lands granted from the United States to the state, shall reserve for the United States rights-of-way for ditches, canals, laterals, telephone and transmission lines which may be required by the United States for the construction, operation and maintenance of irrigation works. (L. '05, p. 182, § 5; Rem.-Bal., § 6412.)

Exemption. See § 240.

243. Restriction on Sale of State Lands Within Project.

After the receipt by the commissioner of public lands of the notice from the secretary of the interior or other officer of the United States, provided for in section 240 above, no lands belonging to the state, susceptible of irrigation and within the area to be irrigated from the works projected by the United States and specified in such notice shall be sold except in conformity to the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued: *Provided*, That the restrictions upon the sale or other disposal by the state of any state lands provided for in this section shall continue for the same periods, respectively, and upon the same conditions, as specified in section 240 above for the withdrawal of waters from appropriation: *And provided further*, That in case the authorization by the United States for the construction of irrigation works pursuant to said section 240 above shall be made within the period of three years specified therefor in said section, then the restrictions upon and conditions prescribed for the sale or other disposal of said lands in this section shall continue so long as any such lands shall remain unsold or not disposed of. (L. '05, p. 183, § 6; Rem.-Bal., § 6413.)

Purchase of state lands. See §§ 206, 224.

244. Water Users' Association Exempt From Tax and Fees.

Any water users' association which is organized in conformity with the requirements of the United States under said act of congress, and which under its articles of incorporation is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of twenty dollars for the filing and recording of its articles

of incorporation and the issuance of certificates of incorporation. (L. '05, p. 184, § 7; Rem.-Bal., § 6414.)

See next section.

245. County Auditor Shall Provide Record Books.

It shall be the duty of the county auditor to provide record books containing printed forms of the articles of incorporation and stock subscriptions to the stock of water users' associations organized in conformity with the requirements of the United States under said act of congress, and to use such book for recording stock subscriptions of such associations; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein and not for the printed form. (L. '05, p. 184, § 8; Rem.-Bal., § 6415.)

See § 244.

246. Right of United States to Acquire Certain Property.

The consent of the State of Washington be and the same is hereby given to the acquisition by purchase or by condemnation, under the laws of this state relating to the appropriation of private property to public uses, by the United States of America, or under the authority of the same, of any tract, piece, or parcel of land, from any individual or individuals, bodies politic or corporate, within the boundaries or limits of this state, for the sites of locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers and harbors of this state, or bordering thereon, or for the sites of forts, magazines, arsenals, docks, navy-yards, naval stations, or other needful buildings authorized by any act of congress, and all deeds, conveyances of title papers for the same shall be recorded as in other cases, upon the land records of the county in which the land so acquired may lie; and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tract or tracts, legal divisions or subdivisions of any public land belonging to the United States which may be set apart by the general government for any or either

of the purposes before mentioned by an order, patent or other official document or papers describing such land; the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States, and with the acts of congress in such cases made and provided; and the jurisdiction of this state is hereby ceded to the United States of America over all such land or lands as may have been or may be hereafter acquired by purchase or by condemnation, or set apart by the general government for any or either of the purposes before mentioned: *Provided*, That this state shall retain a concurrent jurisdiction with the United States in and over all tracts so acquired or set apart as aforesaid, so far as that all civil and criminal process that may issue under the authority of this state against any person or persons charged with crimes committed, or for any cause of action or suit accruing without the bounds of any such tract, may be executed therein, in the same manner and with like effect as though this assent and cession had not been granted. (L. '91, p. 31, § 1; Rem.-Bal., § 6853.)

Right of eminent domain by United States. See § 238.

CHAPTER XIII.

DAMS.

247. Permitting Dams and Works for Irrigation and Power Purposes.

There is hereby granted to persons, firms and corporations organized among other things, for irrigation and power purposes, the right to construct and maintain dams and works incident thereto over, upon and across the beds of the rivers of the State of Washington in connection with such power and irrigation purposes, and there is hereby granted to such persons, firms and corporations an easement over, upon and across the beds of such rivers for such purposes. Such easement shall be limited, however, to so much of the beds of such rivers as may be reasonably convenient and necessary for such uses. All such dams and works shall be completed within five years after

the commencement of construction work upon the same. The rights and privileges granted by this chapter shall inure to the benefit of such persons, firms or corporations from the date of the commencement of construction work upon such dams and works incident thereto, and such construction work shall be diligently prosecuted to completion, and the rights, privileges and easements granted by this chapter shall continue so long as the same shall be utilized by the grantees for the purposes herein specified, and the failure to maintain and use such dams and works after the same shall have been constructed, for a continuous period of two years, shall operate as a forfeiture of all the rights hereby granted and the same shall revert to the State of Washington: *Provided*, That nothing in this chapter shall be construed in such a way as to interfere with the use of said rivers for navigation purposes, and all of such rights, privileges and easements granted hereby shall be subject to the paramount control of such rivers for navigation purposes by the United States: *And, provided further*, That the use and enjoyment of the grants and privileges of this chapter shall not interfere with the lawful and rightful diversion of the waters of said rivers by other parties under water appropriations in existence at the time any such persons, firms or corporations shall avail themselves of the benefits and privileges of this chapter, but no such persons, firms or corporations shall have any right to construct any such dams or works over, upon or across the land between ordinary high water and extreme low water of any river of this state without first having acquired the right to do so from the owner or owners of the land adjoining the land between ordinary high water and extreme low water over or across which said dam or works are constructed. (L. '11, p. 436, § 1.)

Right to overflow state lands. See §§ 38-45.

Conditions of construction. § 258.

Navigation not to be impaired. § 145.

CHAPTER XIV.

CITIES' RIGHTS TO WATER.

248. Cities and Towns May Purchase Water.

All cities and towns within the state, other than cities of the first class, situated within the limits of any irrigation project owned and operated by the United States government, any water users association, private individuals or corporation, where the water used for irrigation and domestic purposes is appurtenant or may become appurtenant to the land embraced within the limits of any such city or town are hereby authorized to purchase, contract for and acquire water for the purpose of furnishing said city or town and the inhabitants thereof with a supply of water for irrigation and domestic purposes, and may do so either by the entire city or town or by assessment districts as the mayor and council of said city or town may determine. (L. '11, p. 510, § 1.)

See § 249.

Rental. See § 252.

Cities of adjoining states may acquire title. See § 255.

249. Specifications to Be Submitted to Voters.

Whenever the city council of any city or town shall deem it advisable that the city or town of which they are officers, should purchase a water right for said city or town and provide a piping system for the proper distribution of said water to the inhabitants thereof, the city or town council may provide therefor by ordinances, which shall specify and adopt the system or plan proposed, the amount of water measured in second feet that it is possible to purchase, the cost thereof, together with the estimated cost as near as can be of the construction of a piping system, and the same shall be submitted for ratification or rejection to the qualified voters of said city or town at the general or special election, and for the purpose of providing for constructing and maintaining such water system for irrigation and domestic purposes, and issuing bonds to pay therefor, such cities and towns are hereby authorized to proceed in all

ways in accordance with and apply all provisions of an act of the legislature of this state, entitled "An act authorizing cities and towns to construct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate certain public utilities, providing for modes of payment therefor, repealing all acts in conflict herewith, and declaring an emergency," approved March 17, 1909. (L. '11, p. 511, § 2.)

The act referred to is chapter 150, Laws 1909; §§ 8005 to 8010, Rem.-Bal. See § 248.

Assessment districts. See § 250.

250. Shall Establish Assessment Districts.

If the city or town council should decide to construct said piping system for the distribution of water under the provisions of this chapter, by the establishment and creation of assessment districts, then before any contract shall be let for such construction the mayor and council shall by ordinance or resolution adopt the plans therefor, which shall be prepared by the city engineer, and shall fix and establish tax assessment districts and such cities and towns are hereby authorized to charge the expenses of such water works for irrigation and domestic purposes to all the property included within such district which is contiguous or approximate to any street in which any main or lateral pipe of such water works is for irrigation and domestic purposes to be placed, and to levy special taxes upon such property to pay therefor, which assessment and tax shall be levied in accordance with the last general assessment of the property within said district for city purposes. (L. '11, p. 511, § 3.)

See § 249.

Proceedings. See § 251.

251. Proceed Under Statutes.

That for the purpose of providing, for the establishment of such water system for irrigation and domestic purposes, for the establishment and creation of assessment districts, for the issuing of bonds to pay therefor, for the collection of all assessments and the enforcement of any lien created by this chapter, such cities and towns are hereby authorized to proceed in all

ways in accordance with and to apply all provisions of any statute now in force or that may hereafter be enacted relative to local improvements: *Provided, however,* Such statute appertain to such cities or towns. (L. '11, p. 511, § 4.)

Establishing assessment districts. See § 250.

252. Rent Fixed by City.

The annual rental for the use of said water for irrigation and domestic purposes shall be fixed by the city or town council and the charges so fixed shall constitute a lien against the premises so furnished as provided by law. (L. '11, p. 512, § 5.)

Rates may be fixed by the public service commission. See § 99 and note. Cities may purchase water. See § 248.

253. City May Dispose of Surplus.

Any city or town owning or operating its own gas, water, or electric plant shall have the right to dispose of any surplus gas, water or electricity, remaining after the wants of the inhabitants thereof have been supplied. (L. '11, p. 512, § 6.)

See § 254.

254. Authority to Maintain All Necessary Conduits.

For the purpose of carrying out the provisions of preceding section any municipality intending to make such purchase shall have authority to build and construct and maintain all necessary conduits and transmission lines from the boundaries of such municipality to the boundary of such city or town selling such surplus products. (L. '11, p. 512, § 7.)

Emergency clause. Law became effective March 17, 1911.

See § 253.

255. Cities of Adjoining States May Acquire Title.

Any municipal corporation of any state adjoining the State of Washington may acquire title to any land or water right within the State of Washington, by purchase or condemnation, which lies within any watershed from which said municipal corporation obtains or desires to obtain its water supply. (L. '09, p. 18, § 1; Rem.-Bal., § 7822.)

Cities may purchase water. See § 248.

256. Polluting Water Supply.

Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. (L. '09, p. 18, § 2; Rem.-Bal., § 7823.)

Public nuisance. See §§ 272 and 273.

Penal provisions generally. See Chap. XIX.

CHAPTER XV.**CANALS CROSSING RAILROADS AND HIGHWAYS****257. Right to Cross Other Roads, Etc.**

* * * * *

Every corporation formed under this chapter for the construction of a canal shall have the power to cross and intersect any railway before constructed at any point in its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor, and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of said canal. (L. '95, p. 148, § 3; Rem.-Bal., § 8736.)

Right to cross public highway. See §§ 259 and 260.

See also §§ 138 and 261.

Condemnation. See §§ 18, 24-30, 46, 47 and 73.

258. Construction Over Rivers, Etc.—Conditions.

Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, watercourse, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction: *Provided*, That the construction of any railway or canal by such corporation along, across or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies, may be exercised by them with reference to canal companies. (L. '95, p. 148, § 4; Rem.-Bal., § 8737.)

Right to cross public highway. See §§ 259 and 260.

See also §§ 138 and 236.

Dams. See § 247.

Navigation not to be impaired. See § 145.

259. Ditch Owner to Bridge Crossings—Procedure in Case of Failure.

Any person constructing a ditch, whenever the same be taken across any public highway, shall put a good, substantial bridge, not less than sixteen feet in breadth, over such water course where it crosses said road, which said bridge shall be constructed within three days after any ditch has been constructed across any highway, and in case any bridge is not so constructed within the time named by the owners thereof, it shall be the duty of the supervisors of the road district wherein said crossing is situated to put a bridge over said ditch of the dimensions specified in this section, and call on the owner of the ditch

to pay the expenses of constructing such bridges; and if the owner of such ditch refuse to pay the said expense, the said supervisor may go before any justice of the peace and make oath to the correctness of the bill, and that the owner of the ditch refuses payment thereof, and thereupon such justice of the peace shall issue a summons against such owner, requiring him to appear and answer to the complaint of such supervisor in an action for the amount due, such summons to be made returnable, and such proceedings shall be given against such owner, the justice of the peace shall assess, in addition to the amount due for the building of said bridge, the sum of ten dollars, as damages, arising from the delay of such owner; such judgment to be collected as in other cases and to be a fund in the hand of the supervisor of roads for such district for the repairs of roads therein, except the ten dollars damages, which shall go to the supervisor to pay him for his trouble and expense in collecting the cost of said bridge. (L. '90, p. 711, § 21; Rem.-Bal., § 6345.)

Right of canal to cross road. See §§ 257-261.
See also §§ 138 and 259.

260. Liability of Owners—Damages.

Owners of all ditches shall be liable for damages resulting through neglect or refusal to comply with the provisions of this chapter. (L. '90, p. 713, § 24; Rem.-Bal., § 6348.)

See § 259.

261. Change of Grade or Location of Road or Canal.

Any corporation may change the grade or location of its road or canal, not departing from the general route specified in the articles of incorporation, for the purposes of avoiding annoyances to public travel, or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change shall have the same right to enter upon, examine, survey, and appropriate the necessary lands and materials as in the original location and construction of such road or canal. (Rem.-Bal., § 8738.)

See § 257 and note.

CHAPTER XVI.

RAILROADS MAY DEAL IN IRRIGATION BONDS.

262. Railroads May Guarantee Funds to Build Ditches.

It shall be lawful for any corporation, whether such corporation is organized under the laws of the Territory or State of Washington, the laws of any other state or territory, or the laws of the United States, owning, leasing or operating any line or lines of railway within the State of Washington, or which may own, lease or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state. (L. '89-'90, p. 529, § 1; Rem.-Bal., § 8663.)

Sale of bonds. See § 116.

See also next section.

263. Railroads May Build and Operate Ditches.

It shall be lawful for any such corporation to build, own and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway. (L. '89-'90, p. 529, § 2; Rem.-Bal., § 8664.)

See § 262.

CHAPTER XVII.

FRANCHISE FOR WATERWORKS.

264. Franchise for Water-Pipe Lines.

The county commissioners of the several counties in this state may grant to persons, companies or corporations the right to lay down, maintain and operate in, along and upon any and all of the streets, alleys, public places and public highways within their respective counties, without the limits of incorporated cities and towns, pipes and conduits for the purpose of conducting water and maintaining and operating water

systems for public or private purposes, under such regulations and conditions as such county commissioners may prescribe: *Provided*, That no such grant or franchise shall be made for a period exceeding twenty-five years, and in all cases shall contain a provision that in the event the territory covered by the grant shall at any time during the franchise period be included within any incorporated city or town the authorities of said city or town shall have the right, to be exercised in their discretion, to acquire by purchase or condemnation any or all of such pipes, conduits and water systems at a price to be based upon the reasonable value of same at that time without any additional value for the franchise, or any unexpired period thereof, and upon such acquirement the said grant or franchise shall immediately terminate. (L. '07, p. 600, § 1; Rem.-Bal., § 5611.)

This section supersedes the next section as to the life of a franchise.

Validity of prior grants. See § 268.

Confirmation of certain franchise grants. See § 267.

265. Franchises on Public Roads.

The county commissioners of the several counties in the State of Washington are hereby authorized and empowered to grant franchises to persons or corporations to use the county roads and streets in the several counties outside of the incorporated towns and cities for the construction and maintenance of water-works, gas pipes, telephone, telegraph and electric light lines: *Provided*, That hereafter on application being made to the board of county commissioners for any such franchise, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give the public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county and in at least one conspicuous place on the roads or streets or parts thereof for which application is made, at least fifteen (15) days before the day fixed for such hearing, and by publishing a like notice three (3) times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to

be at least five (5) days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by the order of the board. If, after such hearing, the board shall deem it to be for the public interest to grant such franchise in whole or in part, the board may make and enter the proper order granting the franchise applied for or such part thereof as the board deems to be for the public interest, and may require any such utility and its appurtenances to be placed in such location on or along the roads or streets as the board finds will cause the least interference with other uses of the roads or streets. Any person or corporation constructing or operating such utility on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel. This chapter shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws: *Provided*, That no franchise shall be granted for a period of longer than fifty years: *Provided further*, No exclusive franchise or privilege shall be granted. (L. '05, p. 210, § 1; Rem.-Bal., § 5612.)

Preceding section limits the life of a franchise to twenty-five years.

266. Prior Grants Declared Valid.

Any and all grants, rights, privileges, franchises or powers heretofore made or attempted to be made, given or granted by the board of county commissioners of any county in this state, when such board was in regular or special session, and when the action of such board is shown by its records, to any person or corporation, to erect, construct, maintain or operate an electric railway or poles, pole lines, wires or any other matter or thing for the furnishing, transmission, delivery, enjoyment or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter or thing re-

lating to said matters and things or either of them, or to lay or maintain pipes for the distribution of water, or gas, in, upon, along, through or over public roads and highways, or any public road or highway, outside the limits of incorporated cities and towns, be and they are hereby confirmed and declared to be valid to the extent that such road or highway has been, prior to the passage of this act, actually occupied by the *bona fide* construction and operation of such utility and no farther. (L. '05, p. 211, § 2; Rem.-Bal., § 5613.)

Franchises. See § 264.

267. Granting of Certain Franchises Confirmed.

Said rights, powers and grants so made or attempted to be made and hereby confirmed, shall have and be of the same force and effect as if the county commissioners in any county of this state, prior to the time of giving or granting said rights, privileges and franchises, had been specifically authorized and empowered to give and grant the same. (L. '05, p. 212, § 3; Rem.-Bal., § 5614.)

Franchise for water pipe lines. See § 264.

CHAPTER XVIII.

ARTESIAN WELLS.

268. Artesian Wells—Regulation of Flow.

It shall be unlawful for any person, firm, corporation or company having possession or control of any artesian well within the state, whether as contractor, owner, lessee, agent or manager, to allow or permit water to flow or escape from such well between the first day of October in any year and the first day of April next ensuing: *Provided*, That this chapter shall only apply to sections and communities wherein the use of water for the purpose of irrigation is necessary or customary: *And providing further*, That nothing herein contained shall prevent or prohibit the use of water from any such well between said first day of October and the first day of April next ensuing, for household, stock and domestic purposes only, water for said

last named purposes to be taken from such well through a one-half inch stop and waste cock to be inserted in the piping of such well for that purpose. (L. '01, p. 259, § 1; Rem.-Bal., § 6404.)

Right-of-way for ditch from artesian well. See § 23.

Capping artesian wells. See § 268.

Penalty. See § 270.

Who may cap wells. See § 271.

269. Capping on Artesian Wells.

It shall be the duty of every person, firm, corporation or company having possession or control of any artesian well, as provided in section 268 above, to securely cap the same over on or before the first day of October in each and every year in such manner as to prevent the flow or escape of water therefrom, and to keep the same securely capped and prevent the flow or escape of water therefrom until the first day of April next ensuing: *Provided, however,* It shall and may be lawful for any such prson, firm, corporation or company to insert a one-half inch stop and waste cock in the piping of such well, and to take and use water therefrom through such stop and waste cock at any time for household, stock or domestic purposes, but not otherwise. (L. '01, p. 260, § 2; Rem.-Bal., § 6405.)

See §§ 23 and 271.

Regulating flow. See § 268.

Penalty. See § 270.

270. Artesian Wells, Flowing, Penalty.

Any person whether as owner, lessee, agent or manager having possession or control of any such well, violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding two hundred dollars for each and every such offense, and the further sum of two hundred dollars for each ten days during which such violation shall continue. (L. '01, p. 260, § 3; Rem.-Bal., § 6406.)

Penal provisions generally. See next chapter.

See § 23.

Additional penalty. See § 271.

271. Artesian Wells, Who May Cap—Lien.

Whenever any person, firm, corporation or company in possession or control of an artesian well shall fail to comply with the provisions of this chapter, any person, firm, corporation or company lawfully in the possession of land situate adjacent to or in the vicinity or neighborhood of such well and within five miles thereof may enter upon the land upon which such well is situate, and take possession of such well from which water is allowed to flow or escape in violation of the provisions of section 268 above, and cap such well and shut in and secure the flow or escape of water therefrom, and the necessary expenses incurred in so doing shall constitute a lien upon said well, and a sufficient quantity of land surrounding the same for the convenient use and operation thereof, which lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court in any such case shall allow the plaintiff a reasonable attorney's fee to be taxed as a part of the cost. This shall be in addition to the penalty provided for in section 270 above. (L. '01, p. 260, § 4; Rem.-Bal., § 6407.)

See §§ 23, 268 and 269.

CHAPTER XIX.**MISCELLANEOUS.****272. Public Nuisances Enumerated.**

It is a public nuisance—

* * * * *

2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake or well, to the injury or prejudice of others;

3. To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water. (L. '95, p. 19, § 1; Rem.-Bal., § 8308.)

Polluting water supply. See § 256.

273. Public Nuisance Defined.

A public nuisance is a crime against the order and economy of the state.

* * * * *

Every act unlawfully done and every omission to perform a duty, which act or omission—

* * * * *

3. Shall unlawfully interfere with, befoul, obstruct or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley or highway—

* * * * *

—shall be a public nuisance. (L. '09, p. 966, § 248(3); Rem.-Bal., § 2500.)

274. Injuring Public Utilities.

Every person who shall wilfully or maliciously remove, damage or destroy—

* * * * *

(2) A pile or other material fixed in the ground and used for securing any bank or dam of any river or other water, or any dike, dock, quay, jetty or lock; or,

* * * * *

(10) A ditch or flume lawfully erected for carrying water or draining land; or,

* * * * *

(19) Who shall erect or maintain any unlawful structure in any stream or river;

—shall be guilty of a misdemeanor. (L. '09, p. 1016, § 404; Rem.-Bal., § 2656.)

275. Unlawful Interference With Gas, Electric, Steam or Water Appliance.

Every person who, with intent to injure or defraud, shall—

(1) Break or deface the seal of any gas, electric, steam or water meter; or,

(2) Obstruct, alter, injure or prevent the action of any meter or other instrument used to measure or register the quantity of gas, electricity, steam or water supplied to a consumer thereof; or,

(3) Make any connections by means of a wire, pipe, conduit or otherwise with any wire, main or pipe used for the delivery of gas, electricity, steam or water to a consumer thereof, in such manner as to take gas, electricity, steam or water from said wire, main or pipe without its passage through the meter or other instrument provided for registering the amount or quantity consumed; or use any gas, electricity, steam or water so obtained; or,

(4) Make any connection or reconnection with such wire, main or pipe, or turn on or off, or in any manner interfere with any valve, stop-cock, or other appliances connected therewith; or,

(5) Prevent by the erection of any device or construction, or by any other means, free access to any meter or other instrument for registering or measuring the amount of gas, electricity, steam or water consumed, or interfere with, obstruct or prevent, by any means, the reading or inspection of such meter or instrument, by the person, company or corporation owning the same; or,

(6) Take or use any water from any irrigation flume, ditch or lateral, without the consent of the owners thereof, or open, close or interfere with any gate connected therewith;
—shall be guilty of a misdemeanor. (L. '09, p. 1018, § 405; Rem.-Bal., § 2657.)

See next section and § 281.

276. Interfering With Dam, Reservoir, Etc.

Every person who shall wilfully or maliciously displace, remove, injure or destroy any pier, boom, or dam lawfully erected or maintained upon, in or across any water in this state, or any dam or reservoir lawfully maintained for impounding water, or hoist any gate in or about such dam or reservoir, shall be

guilty of a gross misdemeanor. (L. '09, p. 1018, § 406; Rem.-Bal., § 2658.)

See §§ 275 and 281.

277. Tampering With Irrigation Appliances.

Any person or persons who shall wilfully interfere with, injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume or other structure or appliance for the diversion, carriage, storage, apportionment, or measurement of water for irrigation, reclamation, power or other beneficial uses, or shall wilfully injure or destroy any telegraph, telephone or electric transmission line, or any other property owned, occupied, or controlled by any person, association, or corporation or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor. (L. '09, p. 721, § 1; Rem.-Bal., § 6383.)

See also §§ 236, 265, 266 and 281.

278. Stealing Water.

Any person or persons who shall wilfully or unlawfully take or use water, or conduct the same into his ditch or to his land, or land occupied by him, and for such purposes shall cut, dig, break down, or open any headgates, bank, embankment, canal or reservoir, flume or conduit, or interfere, injure or destroy any weir, measuring box or other appliance for the apportionment and measurement of water with intent maliciously to injure any person, association, or corporation, or by the United States, or for his or her gain, or with intention of stealing or unlawfully taking or causing to run or pour out of such structure or appliance any water for his or her own private benefit or advantage to the injury of any other person, association or corporation, or by the United States lawfully in use of such water or of such structure or appliance, shall be guilty of a misdemeanor. (L. '09, p. 721, § 1; Rem.-Bal., § 6383a.)

See also §§ 74 and 236.

279. Evidence of Guilt.

The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their hav-

ing been interfered with, injured or destroyed, shall be *prima facie* evidence of the guilt of the person so using it. (L. '09, p. 722, § 3; Rem.-Bal., § 6383b.)

280. Penalty.

Any person or persons convicted of committing any of the misdemeanors in sections 277, 278 and 279 specified, or of any of said offenses, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be imprisoned in the county jail not exceeding six months, or both, in the discretion of the court. (L. '09, p. 722, § 4; Rem.-Bal., § 6383c.)

281. Trespassing on Irrigation Appliances—Offense.

Any person who shall tamper with, alter, change or in any wise interfere with any headgate, measuring box, dam or other device used for diverting, measuring or distributing any water for irrigating, stock or domestic purposes after the same shall have been regulated, fixed or adjusted by any sheriff or other proper authority, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than ten nor greater than one hundred dollars. (L. '01, p. 35, § 1; Rem.-Bal., § 6396.)

See §§ 275 and 276.

Measuring boxes. See § 68.

282. Guilt, Tampering With Head-Gate, Etc.

Whenever any such headgate, measuring box, dam or other device shall be altered, changed or tampered with after having been adjusted by such sheriff or other proper authority, so as to cause a greater quantity of water to flow into or through any irrigating or other ditch or canal, the person occupying, using or operating the lands or premises whereon such waters are used shall be *prima facie* guilty of violating the provisions of the preceding section. (L. '01, p. 35, § 2; Rem.-Bal., § 6397.)

Measuring boxes. See § 68.

283. Noxious Weeds Along Canals and Ditches.

If any person or persons, company or corporation, owning, maintaining or operating, any canal or ditch for irrigation,

drainage or power purposes shall permit or suffer any weed, weeds or other noxious growths to grow upon the banks of such ditch or canal and suffer the same to stand until the seeds thereof get ripe; such person or persons, company or corporation shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined in the sum of ten dollars; and for the second and each subsequent offense not less than twenty-five nor more than one hundred dollars; to be recovered with costs in an action to be brought in the name of the State of Washington for the use and benefit of the public school fund of the state. (L. '07, p. 45, § 1; Rem.-Bal., § 3037.)

APPENDIX.

IRRIGATION CODE TO BE PRINTED.

HOUSE CONCURRENT RESOLUTION No. 17.

WHEREAS, House bill No. 284 embraces the proposed water code heretofore prepared by the code commission appointed by Governor M. E. Hay for that purpose; and,

WHEREAS, No arrangements were made for the printing and publishing of said proposed code until after the introduction of said House bill No. 284; and,

WHEREAS, The members of the committee on irrigation and arid lands, and the members of the legislature, have been unable to give proper consideration to said proposed water code during the present session because of the fact that due publicity has not been given to the same; therefore, be it

Resolved, by the House, That two thousand copies of said House bill No. 284 be printed in pamphlet form for the use of the members of the legislature and the state officers, for the purpose of giving publicity to said proposed water code, in order that the same may be acted on intelligently at the next session of the legislature.

Passed by the House March 6, 1911.

Passed by the Senate March 7, 1911.

(L. '11, p. 658; H. C. R. No. 17.)

The above resolution was not complied with as the printing appropriation did not provide for same.

PETITION FOR EXTENSION OF TIME TO HORSE HEAVEN
COUNTRY.

HOUSE JOINT MEMORIAL No. 7.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Your memorialists, the Senate and House of Representatives of the State of Washington in legislative session assembled, being the twelfth regular session, respectfully represent in petition as follows:

There are over 300,000 acres of arid lands in Benton, Yakima, and Klickitat counties in the State of Washington, lying

in the valley of the Columbia river, and commonly known as the "Horse Heaven" district, which are capable of irrigation. About three-fourths of this land is now held in private ownership and the remainder has been filed upon under the desert land acts.

The entrymen who have filed on this land under the desert act have done their assessment work and made their annual proofs in good faith, and confidently believe that they could make reclamation and final proof within the limit of time provided by the United States statutes and extension enactments amendatory thereto, but the work of bringing water from the mountains, distant one hundred and fifty miles, has proven so great that it is now apparent that more time will be required than is now given by law.

Much of this vast district of 300,000 acres or more is valueless without irrigation, and it is now definitely known that irrigation is possible therefor at a reasonable cost. It has often been announced through press reports that the reclamation department of the United States government will pursue a policy of encouragement to private capital in reclaiming arid lands. Most of the projects with water supply comparatively near have already been undertaken, and those in which the water supply is remote cannot be financed and canals built within the period given to desert entrymen for making final proof.

WHEREFORE, Your memorialists respectfully petition the congress of the United States to enact a law which shall extend the time in which the desert land entrymen of the "Horse Heaven" district may make final proof—until such time as water may become available to them through an irrigation project now under way for this district.

Passed by the House January 25, 1911.

Passed by the Senate February 14, 1911.

(L. '11, p. 670; H. J. M. No. 7.)

LOGGED-OFF AND ARID LAND LAW.

The legislature of 1913 enacted into law a measure having for its intent the organization of agricultural development districts throughout the state for the purpose of bringing the logged-off and arid lands of Washington into productive use.

This law is known as "The Logged-off and Arid Land Law" and is Chapter 155, Session Laws of 1913, House bill No. 651, the title of which is: "Providing for Land Development: An act relating to agriculture; promoting the general welfare by bringing into productive use the unimproved lands of this state and aiding in the production and marketing of agricultural products; providing for the establishment of agricultural districts, and authorizing the investment of all public funds in the bonds of such districts."

Organization, under the provisions of this act, has been attempted in several counties of the state and the matter has been submitted to the electorate but, in every instance, the voters have refused to ratify the establishment and formation of such districts.

Copies of this law, in pamphlet form, may be obtained by addressing a request to I. M. Howell, Secretary of State, Olympia, Washington.

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Record book, county auditor to keep.....	245	135
WEEDS:		
Noxious, along canals, prohibited.....	283	153

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